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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

CLERK'S CERTIFICATE.

I, Carl W. Reuss, Clerk of the United States Court of Appeals for the Sixth Circuit, do hereby certify that the following is the original record on appeal consisting of one box of pleadings, depositions, etc. as certified to this court by the Clerk of the United States District Court for the Western District of Kentucky, at Louisville, and the transcript of proceedings in the case of Fortner Enterprises, Inc. v. United States Steel Corp., et al., No. 17,546, as the same remains upon the files and records of said United States Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 23d day of May, A.D. 1968.

(s) Carl W. Reuss,
Clerk of the United States Court of
(Seal) Appeals for the Sixth Circuit.

B

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

For the Sixth Circuit

APPEAL FROM	CASE No.
Western District of Kentucky, at Louisville	17,546

TITLE OF CASE

Fortner Enterprises, Inc.,
Plaintiff-Appellant,

v.

United States Steel Corporation,
U. S. Steel Homes Credit Corporation,
*Kenilworth Investment Co., Inc. and
*Richard K. Finley Corporation,
Defendants-Appellees.

(Anti-Trust)

ATTORNEYS FOR APPELLANT

Kenneth L. Anderson
Woodward, Hobston & Fulton
1805 Kentucky Home Life Building
Louisville, Kentucky 40202

A. Scott Hamilton, Jr.
Hamilton, Hopson & Hamilton
310 W. Liberty Street
Louisville, Kentucky

*These lines were stricken from the General Docket.

ATTORNEYS FOR APPELLEE

Albert F. Bentlinger
501 South Second Street
Louisville, Kentucky 40202

Middleton, Seelbach, Wolford,
Willis & Cochran
*Armer H. Mahan (Withdrawn)
310 W. Liberty Street
*Louisville, Kentucky

J. E. Rose
116 S. Fifth St.
Louisville, Kentucky

John G. Hicks
716 Louisville Trust Bldg.
Louisville, Kentucky

No. below:	4392 Civil
Judge below:	Gordon
Date of Judgment:	September 9, 1966
Notice of Appeal filed:	October 6, 1966

DATE	ACCOUNT OF APPELLANT	Received	Disbursed
11/ 9/66	Woodward, Hobson & Fulton	25.00	
11/18/66	Treasurer of U. S.-Acc't Fees Earned		25.00
	Printing appendix to brief for Appellant		$4,536.64

*These lines were stricken from the General Docket.

DATE		FILINGS—PROCEEDINGS
1966		
Nov.	9	Certified record (1 box pleadings, depositions, etc.), filed; and cause docketed
"	14	Appearance of counsel for Appellees
"	14	Appearances of counsel for Appellant
"	18	Agreed motion: Appellant's statement as to contents of appendix to 12/15/66; Appellant's brief to 1/31/67 (Granted)
Dec.	15	Statement of Appellant as to contents of appendix
1967		
Jan.	24	Agreed motion: Appellant's brief and appendix to 3/31/67 (Granted)
Mar.	10	Motion of Appellant to file brief of 100 pages within thirty days after ruling on this motion (Granted—Peck, J.)
Apr.	7	Twenty copies of Brief and Appendix for Appellant
"	7	Twenty copies of Appendix for Appellant (2 vols.)
"	7	Proof of service of brief and appendix for Appellant
May	1	Joint motion: Appellees' brief and appendix to 8/4/67 (Granted)
July	28	Joint motion: Appellees' brief and appendix to 9/18/67 (Granted)
Sept.	18	Twenty copies of brief and appendix for Appellees
"	18	Proof of service of brief and appendix for Appellees
Oct.	3	Joint motion: Appellant's reply brief to 10/25/67 (Granted)
"	24	Twenty copies of Reply Brief for Appellant

DATE 1967	FILINGS—PROCEEDINGS
Oct. 24	Proof of service of reply brief for Appellant
" 27	Motion of Appellees to dismiss appeal for lack of jurisdiction, with memorandum in support, and proof of service
" 30	Memorandum for Appellant on motion to dismiss appeal
" 30	Affidavit of Kenneth L. Anderson
" 30	Certificate of service of copies of Brief, appendix and reply brief for Appellant on counsel for Kenilworth Investment Co., Inc. and counsel for Richard K. Finley Corporation
" 30	Motion of Appellant for an order stating whether or not Kenilworth Investment Co., Inc. and Richard K. Finley Corporation are or should be appellees in this appeal, and allowing said parties time to file brief
Nov. 6	Objection of Appellees to Appellant's motion to make Kenilworth Investment Co., Inc., and Richard K. Finley Corporation parties, with memorandum in support and proof of service
" 13	Appellant's reply to memorandum of Appellees objection to motion
" 13	Order denying motion of Appellees to dismiss appeal for lack of Jurisdiction, and granting motion of Appellant to add Kenilworth Investment Co., Inc. and Richard K. Finley Corporation as Appellees, said Appellees being permitted to file typewritten copies of briefs within twenty days from this date (Edwards, J.) P-613
" 20	Motion of Armer H. Mahan to withdraw as counsel for Kenilworth Investment Company, Inc. (Granted—GE)

DATE	FILINGS—PROCEEDINGS
1967	
Nov. 30	Motion of Appellee, Kenilworth, to substitute counsel
" 30	Motion of Appellees, Kenilworth Investment Co. and Richard K. Finley Corporation, for an allocation of time for hearing
Dec.	Four copies Brief and Appendix for Appellees, Kenilworth and Finley
"	Motion of Kenilworth and Finley, Appellees, to be dismissed as parties to this appeal.
" 2	Motion of Appellees, Kenilworth and Finley, for leave to file claim against Appellant and against Defendants-Appellees
" 5	Cause argued and submitted (Before: Edwards, Peck and McAllister, JJ.) P-646
" 8	Order dismissing the Kenilworth Investment Company, Inc. and Richard K. Finley Corporation as parties to the Appeal (Edwards, Peck and McAllister, JJ.) P-657
" 11	Appellant's affidavit for cost of printing
1968	
Apr. 26	Judgment of the District Court affirmed on order without opinion (McAllister, J.) Q-169
May 7	Motion of Appellant to stay the mandate pending filing of a petition for a writ of certiorari
" 17	Order staying mandate thirty days (McAllister, J.) Q-204

CAUSE ARGUED AND SUBMITTED.
DEC. 5, 1967

Before: EDWARDS and PECK, Circuit Judges, and McALLISTER, Senior Circuit Judge.

This cause is argued by Kenneth L. Anderson for appellant, Albert F. Reutlinger for appellee and John G. Hicks for purchasers-appellees and is submitted to the Court.

ORDER—Filed April 26, 1968.

Before: EDWARDS and PECK, Circuit Judges, and McALLISTER, Senior Circuit Judge.

The above cause coming on to be heard on the briefs of the parties, the transcript of the record, and the argument of counsel in open court, and the court being duly advised; now, therefore, it is hereby ordered, adjudged and decreed that the judgment of the District Court be and is hereby affirmed for the reasons set forth in the memorandum opinion of Judge James F. Gordon.

Entered by order of the court.
(s) Carl W. Reuss,
Clerk.

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

No. 4392

Fortner Enterprises, Inc., - - - - Plaintiff,

v.

United States Steel Corporation,
United States Steel Homes Credit Corporation, - - - - - - - Defendants.

For Plaintiff:
Kenneth L. Anderson
Woodward, Hobson & Fulton,
1805 Ky. Home Life Bldg.
A. Scott Hamilton, Jr.
Hamilton, Hopson & Hamilton
1015 Ky. Home Life Bldg.
For Defendant:
Albert F. Reutlinger
501 South Second St.
Louisville, Kentucky
Armer H. Mahan,
310 W. Liberty
represents, Robt. F. Simmons
(2) Rich K. Fenley Corp.

Basis of action: Sherman & Clayton Acts; $168,300.00 and decree permanently enjoining enforcement of loan agreement.

Jury trial claimed by Plaintiff on July 25, 1962

1962	Plaintiff's Account	Received	Disbursed
July 19	Hamilton, Hopson & Hamilton, Attys.,	15.00	
July 19	Treas. U. S.		15.00
		15.00	15.00
1966			
Oct. 6	Kenneth L. Anderson	5.00	
Oct. 6	Treas. — U. S.		5.00

Receipts, Remarks, Etc.

J. S. 5 mailed August, 1962.

DOCKET ENTRIES.

1962	
7/19	Complaint filed with Exhibits A & B. Summons issued and delivered to U. S. Marshal with 2 copies of Summons and 2 copies of Complaint.
7/23	Summons returned with following notation: "I hereby certify and return, that on the 23rd. day of July 1962, I received this summons and served it together with the complaint herein as follows: I hereby certify and return that I served Summons and Complaint on the therein named United States Steel Corporation and United States Steel Homes Credit Corporation by handing to and leaving a true and correct copy thereof with Miss Edna Seebolt, Assistant Secretary of C. T. Corporation, Process Agents for United States Steel Corporation and United States Steel Homes Credit Corporation, individually, and personally at 5th and Jefferson, Ky. Home Life Bldg., Louisville, Ky. on July 23rd, 1962. Harry M. Miller, by Gilbert E. Bryant, Deputy U. S. Marshal."
7/25	Demand for jury trial filed by Kenneth L. Anderson and A. Scott Hamilton, Jr.
9/11	Answer and Counter-Claim filed.
9/11	Interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure filed by Defendants.
9/26	Amended counter-claim filed.
9/27	Interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure filed by Kenneth L. Anderson. (2 sets)
10/ 4	Reply To Amended Counterclaim of U.S. Steel Homes Credit Corporation — filed by attys. for plff.
10/24	Motion to Strike portion of plaintiff's reply to amended counterclaim filed by defendants. No notice of hearing.

Docket Entries

1962

10/25 Interrogatories to Plaintiff and Request for Admissions filed by Defendants.

10/26 Answer to Interrogatories filed by Plaintiff.

10/30 Motion to Overrule Motion to Strike filed by Plaintiff. Memorandum in support of Plaintiff's Motion to overrule U. S. Steel Homes Credit Corporation Motion to Strike — filed. Order Tendered.

11/ 2 Memorandum of Authorities in support of Defendant's Objections to Certain Interrogatories and Memorandum of Authority in support of Defendant U. S. Steel Homes Credit Corporation's Motion to Strike certain paragraphs of Plaintiff's Reply to the Amended Counterclaim — filed.

11/ 5 Answer to Interrogatories filed by Plaintiff.

11/ 8 Response to Request for Admissions filed by Plaintiff.

11/16 Answers to Interrogatories on behalf of U. S. Steel Corp. — filed.
Answers to Interrogatories on behalf of U. S. Steel Homes Credit Corp. — filed.

1963

2/15 Second Amended Counterclaim filed. (U. S. Steel Homes Credit Corp.)

2/15 ORDER dated 2/15/62 filing Second Amended Counterclaim of U. S. Steel Homes Credit Corp. Copies 2/15/63 to Attorneys Anderson, Hamilton Reutlinger. fa

2/28 Reply to Second Amended Counterclaim of U. S. Steel Homes Credit Corp. filed by Kenneth L. Anderson and A. Scott Hamilton.

3/25 Order setting pre-trial conference on Tues., Apr. 9, 1963, at 9:15 A.M., etc. Copies to Kenneth L. Anderson, A. Scott Hamilton, Albert Reutlinger.

Docket Entries

1963

3/29 "Memorandum In Support Of Plantiff's Motion To Overrule Defendants' Motion To Strike Paragraphs 9, 10 And 11 Of the Plaintiff's Reply To Counterclaim — filed by Kenneth L. Anderson and A. Scott Hamilton, Jr., attys. for plaintiff."

4/ 8 Affidavit of Harry R. Black filed (Steel Corp)

7/ 5 Motion to require a separate trial of the anti-trust aspects of this litigation from the mortgage note foreclosure as set forth in the counterclaim filed by Albert F. Reutlinger, with Memorandum in support thereof.

7/ 9 "Motion To Overrule U. S. Steel Homes Credit Corporation's Motion To Separate The Antitrust Aspects Of This Case From The Foreclosure Aspects" — filed by Kenneth L. Anderson, atty for Plff.

7/ 9 "Memorandum In Support Of Motion To Overrule The Motion Of U. S. Steel Homes Credit Corporation To Separate The Anti-trust And Foreclosure Aspects of This Case" — filed by Kenneth L. Anderson, Atty. for Plff.

7/30 ORDER dated 7/30/63 disposing of United States Steel Corporation's Objections to certain Interrogatories propounded to it by the Plaintiff. Copies to counsel of record.

7/30 ORDER dated 7/30/63 (Pre-Trial Order No. 1) that (1) Motion of U. S. Steel Homes Credit Corp. to strike Para 9, 10 & 11 of reply to and counterclaim is sustained (2) Plff Motion to overrule said motion to strike is overruled. (3) Motion to separate trial of the issues presented in the counterclaim (and as amd) of Credit Corp. from trial of issues created by complaint is sustained. From and after the entry of this order, all matters pertaining to the counterclaim (collection of mortgage debt

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and foreclosure) shall be considered separate and apart from any of the anti-trust aspect of the case. Separate rulings, motions, orders, pleadings, interrogatories, etc., shall be made and entered therein and all further proceedings shall be designated by the number of 4392-A and no further reference shall be made to the United States Steel Corporation in the style thereof. (4) The joint motion of the defendants to separate trial of the issue of liability from trial of the issue of damages in the anti-trust aspect of the within action is overruled and the plaintiff's motion too overrule said joint motion of the defendants is sustained. Copies to counsel of record.

9/ 5 Answers to Interrogatories on behalf of U. S. Steel Corp. filed.

9/ 5 Answers to Interrogatories on behalf of U. S. Steel Homes Credit Corp. filed.

9/ 5 (4392-A) Affidavit of W. L. Rollins filed.

12/23 (A) Motion to Appoint a Receiver filed by Defendant with Notice and Motion for Summary Judgment and Memorandum in support of motion for receiver and for summary judgment. Affidavit of Albert F. Reutlinger filed. Order and Judgment tendered.

12/23 Motion for Court to overrule defendant's motions to appoint a receiver and for summary judgment filed by plaintiff with notice of hearing 9:30 am 12/20/63.

1964

1/14 A Motion to appoint a Commissioner filed by defendants: Order Tendered.

1/14 A ORDER dated 1/14/64 appointing Jack E. Mudd a Commissioner of this court in the within action (4392-A) for the purpose of aiding the court in en-

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forcing any judgment it may enter herein and setting Commissioner's bond at $25,000.00, which bond will require surety thereon to be approved by this court and shall be conditioned upon the proper execution of Commissioner's duties as may be required by this court. Copies 1/14/64 to Attorneys Anderson, Hamilton and Reutlinger and to Jack E. Mudd, Commissioner.

1/15 (4392-A) JUDGMENT Dated 1/15/64 providing that U./S. Steel Homes Credit Corp. shall recover from Fortner Enterprises, Inc., various sums on various obligations and costs, and Credit Corp. may have execution for the collection thereof. To secure the aforesaid debts (pmt) the Credit Corp. has a lien on various properties described in the judgment, prior and superior to all liens except for the 1962 and 1963 State, County and School taxes which are unpaid. Jack E. Mudd, Commissioner, shall advertise the sale and sell the property described at the courthouse door of the Jefferson County Courthouse, Louisville, Kentucky, at 11 am on 3/11/64. At least 15 days before date of sale the Commissioner shall secure an appraisal by two competent persons as to the value of the properties to be sold, said appraisal to be made a part of the record herein (KRS 426.229), appraisal fees to be taxed as part of costs and paid from the proceeds of the sale by the Commissioner as soon as possible. On 4 consecutive weeks next prior to date of sale the Commissioner shall advertise the sale in a daily newspaper of general circulation in Jefferson Co. and shall cause handbills to be distributed advertising the sale. Handbill to be posted at courthouse door 15 days prior to sale. Sale to be at public auction, properties shall be sold in order listed, improved lots with buildings to be offered sepa-

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rately and then as a whole, terms of sale to be 10% cash and the balance on delivery of deed. Various properties listed by groups shall be offered as individual lots, then collectively in groups and then as a whole; terms of sale of lots to be 10% cash at the time of sale, 20% cash on delivery of deeds and the balance on or before 18 months from date of deed. Deferred payments to bear interest at 6% per annum from date of sale. Purchaser shall be required to execute bonds for deferred payments and a lien shall be retained upon the property conveyed. Purchaser may prepay any payment before maturity without penalty. Purchaser may secure release of the individual lots from the vendor's (4392-A) lien, upon the payment of that individual lot's pro rate portion of the original purchase price related to that group of lots of which the lot to be released is a part, together with accrued interest thereon. All property sold in accordance with this judgment is sold subject to 1962 and 1963 and 1964 State, County and School taxes and all taxes thereafter, easements and restrictions of record and applicable zoning laws. Except for mentioned encumbrances the property is to be sold free and clear of all other liens and encumbrances. The Commissioner, as soon as the sales have been made, deeds delivered and money paid shall pay costs, including a reasonable allowance for his services and thereafter shall pay the aggregate judgment debts of the U. S. Steelhomes Credit Corp. to it. The surplus, if any shall be paid to Fortner Enterprises, Inc. This judgment shall be executed immediately. In the event Fortner Enterprises, Inc. does not promptly executed and deliver conveyances to of the lands to the pur- Enterprises, Inc. does not promptly execute and

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deliver such. Conveyance by the Commissioner shall convey a good fee simple title, subject only to the limitations found in Section 11(k) of this judgment. This action is retained on the docket for such further and necessary orders to the court may determine. Copies 1/15/64 to Attorneys Anderson, Hamilton and Reutlinger, and to Jack E. Mudd, Commissioner.

2/ 3 Answers to Interrogatories on behalf of United States Steel Corp. filed 4392-A.

2/26 (4392-A) Motion filing appraisal filed. with Appraisal Report. Order tendered.

3/10 Order signed by Judge Shelbourne dated 3/10/64 that the Appraisal as made by the appointed Appraisers be filed and made part of the record and further that each of said Appraisers be allowed a fee for services rendered in the amt of $200.00 each, same to be taxes as costs. Copies mailed to Jack E. Mudd, Comm., Kenneth L. Anderson, A. Scott Hamilton Jr., and Albert F. Reutlinger. Appraisal Report filed.

3/10 Order (#4392-A) signed by Judge Shelbourne dated 3/10/64 that Jack E. Mudd, Commissioner, at the foreclosure sale, which is the subject matter of this action shall use for all purposes the individual lot appraisals appearing in the Appraisal Report filed in this action; further that for the purpose of establishing the equity of redemption of Fortner Enterprises, Inc., the individual lot appraisals appearing in the Appraisal Report shall be used. Copies mailed to Jack E. Mudd, Comm., Kenneth L. Anderson, A. Scott Hamilton, Jr., and Albert F. Reutlinger.

3/13 Notice to take depositions of Messrs. Richard C. Dyas, William H. Lang, Benjamin L. Rawlins filed by Kenneth L. Anderson and A. Scott Hamilton.

Docket Entries

1964

3/17 (4392-A) Motion of Jack E. Mudd, Commissioner, to file Report of Sale filed. Report of Sale, with attachments, and proposed order tendered therewith.

3/18 ORDER dated 3/18/64 that the Report of Sale of the Commissioner be filed herein and made a part of this record, same to lay over for confirmation by this Court. Copies to Commissioner Mudd and Attorneys Reutlinger, Anderson and Hamilton 3/18/64.

3/18 Report of Sale filed.

4/ 9 Notice and Motion (4392-A) for Order confirming sale and report of sale filed.

4/ 9 ORDER dated 4/9/64 (Judge Brooks) that the Commissioner's sale held 3/11/64, pursuant to the judgment entered herein, and the Commissioner's Report of Sale, ordered filed March 18, 1964 are hereby confirmed. Copies to Attorneys Hamilton, Anderson, Mudd, Mahan and Reutlinger.

4/16 ORDER (Agreed) Judge Brooks dated 4/16/64 that certain described documents should be produced by the respective witnesses having custody of same. Copies to Attorneys Anderson and Reutlinger.

4/23 Notice to take deposition of DAVID H. BOYD, at the offices of Woodward, Hobson & Fulton, Ky. Home Life Bldg., Louisville, Ky. at 10 am 4/29/64 filed by plaintiff.

5/ 1 (4392-A) Order Approving Deeds of Commissioner, signed by Judge Shelbourne May 1, 1964, providing: That 3 deeds produced and executed in open Court by Jack E. Mudd, Commissioner, on behalf of grantors therein, conveying property described therein to Kenilworth Investment Company, Inc., copies of which are filed with the order, be approved as executed by the Commissioner; that the

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Court affixed its approving signature thereto; that the Clerk of the U. S. District Court is directed to certify said deeds to the Clerk of the Jefferson County Court for record; that the deeds be delivered to Jack E. Mudd, Commissioner, for delivery to the purchaser. Copies to J. E. Mudd, Comm. and to Attorneys Mahan, Reutlinger, Anderson and Hamilton 5/1/64.

5/11 Deposition of WILLIAM H. LANG, BENJAMIN L. RAWLINS and RICHARD C. DYAS filed by Adler Reporting Service.

6/23 Original deed dated June 23, 1964, between Fortner Enterprises, Inc. a corporation, and U. S. STEEL HOMES CREDIT CORPORATION, a corporation, parties of the first part, all by Jack E. Mudd, Commissioner, and Richard K. Fenley Corporation, party of the second part, with approving signature of Judge Roy M. Shelbourne thereon and certification by the Clerk of the U. S. District Court to the Jefferson County Court Clerk for record, delivered to Jack E. Mudd, Commissioner, by Clerk U. S. District Court pursuant to order dated June 23, 1964. Photocopy of said deed filed.

7/ 2 Deposition of David H. Boyd, taken by plaintiff, filed by L. Dale Fadden, Court Reporter.

9/21 Depositions of ANDREW COWART, HARRY R. BLACK, MEREDITH RUSSELL MOREILLON, EDWARD L. AKERS, NEIL G. DAY, WILLIAM L. ROLLINS and STANLEY J. MACK filed. Envelope of exhibits filed with Mack deposition.

1965

1/15 Motion for Production of Documents filed by Plaintiff.

1/15 Motion to assign for Trial filed by Plaintiff.

5/12 Request for execution and Affidavit of Albert F. Reutlinger filed.

Docket Entries

1965

5/12 Writ of fieri facias dated 5/12/65 against Fortner Enterprises, Inc., in favor of U. S. Steel Homes Credit Corporation in amount of $88,733.60, issued. Original and 3 copies delivered to U. S. Marshal.

5/14 Writ of Fieri Facias returned executed.

8/31 ORDER dated 8/31/65 transferring to docket of Judge Gordon.

8/31 ORDER dated 8/31/65 setting PTConf 9/21/65 at 11 am. Copies to Attorneys Anderson, Hamilton, Reutlinger and Mahan. (Both orders).

9/10 ORDER (AGREED) dated 9/10/65 continuing pre-trial conference to 9/28/65 at 11 am. Copies to Attorneys Anderson and Reutlinger.

9/30 Order signed by Judge Gordon on 9/30/65 — That def will proceed forthwith for total and complete discovery of all phases of this action, that on Oct. 15, 1965 at 2 p.m. Court will hear motion of def to separate questions of liability from allegations for damages in this action and Defs' motion for bond for costs and any other motions as are presented to Court. Parties will prepare memoranda of Authority for all motions made by them or responses made thereto. Further ordered that at hearing, Court will set a day certain for trial of this action. Copies to Kenneth L. Anderson, A. Scott Hamilton, Jr. and Albert F. Reutlinger.

10/ 8 Memorandum in support of a motion to require plaintiff to execute a cost bond and a motion to have the Court separate trial of the issue of liability from the assessment of damages.

10/13 Memorandum in opposition to Defendant's Motion for Bond for costs, Motion to separate liability and assessment of damages — filed by Plaintiff.

10/15 MOTION FOR Cost Bond filed by Defendants.

Docket Entries

1965

10/15 Motion to separate the issue of liability from the issue of damages filed by Defendant.

10/18 ORDER dated 10/18/65 thT (1) Defendants motion for cost bond SUSTAINED, (2) Defendant's motion to separate the issue of liability from the issue of damages OVERRULED, however plaintiff is directed that the Court will require that Plff offer its proof in the order of (a) conspiracy, (b) fact of damage, and (c) proof of actual damage suffered, any deviation from said order of proof to be upon motion and usual pre-trial order as to damages (special), witnesses etc. Copies to Attorneys Anderson, Hamilton and Reutlinger. Jury Trial 2/14/66.

12/ 2 Bond for Costs, dated 10/21/65, in the amount of $500.00, executed by Fortner Enterprises, Inc. and Western Surety Company, with approving endorsement of Judge Gordon, dated 12/2/65, thereon, as follows: This bond satisfactory for costs herein subject to any further order of the Court.

1966

1/21 Motion to file amended complaint filed by plaintiff.

1/21 ORDER dated 1/21/66 sustaining motion to amend. Copies to Attorneys Anderson, Hamilton and Reutlinger.

1/21 Amended Complaint filed, with Exhibits.

1/21 ORDER dated 1/21/66 reassigning jury trial to 7/6/66. Copies to Attorneys Anderson, Hamilton and Reutlinger.

5/23 Answer to Amended Complaint filed by A. F. Reutlinger for defts.

6/ 7 ORDER dated 6/7/66 continuing hearing set 6/17/66 to 7/6/66 at 9:30 a.m. Copies to Attorneys Anderson, Hamilton and Reutlinger.

Docket Entries

1966

6/ 7 Motion to dismiss amended complaint, or strike pars 2, 3, 4, 5 and 6 of said complaint; and motion to dismiss par. 4, subparagraph (g) of par 5 and 6 of amended complaint etc., with notice of hearing on Friday, June 17, 1966 at 10:30 A.M. Memorandum of Authority in support — filed by Albert F. Reutlinger, atty for defts. (Note: see above 6-7 continuing hearing).

6/15 Praecipe for spoes to Mack, Black, Day, Moreillon, Akers, Cowart and Rollins filed by Plaintiff. Spoes issued and delivered to U. S. Marshal.

6/21 Request for Issuance of Subpoenas as to A. W. Edmondson, John Cooper, Howard Bolin, Herman Miles, Wilbur Powell, J. Ed Mudd, A. B. McCulloch, and Stratton O. Hammon, to testify at trial on July 7, 1966 at 9:30 a.m. in behalf of Plaintiff — filed. Spoes issued and delivered to Marshal 6/21/66.

6/22 Subpoena directed to John Cooper, returned as executed on 6/21/66.

6/22 "Memorandum in Compliance with the Court's Pre-Trial Order Concerning Witnesses and Exhibits" — filed by Albert F. Reutlinger, Attorney for Defendants.

6/23 Subpoena returned as executed for Mr. A. B. McCulloch on June 22, 1966 by U. S. Marshall.

6/23 Request for issuance of 3 subpoenas in blank filed by Albert Reutlinger, Atty. for Defs. Spoes issued and delivered to Marshal.

6/24 Spoe returned as executed as to A. W. Edmondson.

6/24 Spoe returned as executed as to Edwin D. Horn.

6/24 Spoe returned as executed as to J. Ed Mudd and spoe returned as executed as to A. B. Fortner, Jr.

6/24 Request for issuance of spoes. as to Robt. E. Robinson, Earl E. Smith, Roscoe Dalton, Paul

1966

Semonin, Hall Thomas, Ed Anschutz, Al Fleig, Edward Horn, Allan Nash, John Prood, and Michael Atlas — filed.

6/24 Spoes issued and delivered to Marshal.

6/25 Defts' Motion for Summary Judgment filed, with Memorandum of Authority in Support of Motion, Noticed for hearing Wed. July 6, 1966, 9:30 a.m. — filed.

6/25 Affidavits of W. L. Rollins, Harry R. Black, Richard K. Harb, and Innes W. Dobbins, Jr., in support of def's motion for summary judgment — filed.

6/28 Spoes returned as executed as to Herman R. Miles, Stratton O. Hammon, Herman R. Miles, Roscoe Dalton, Hal Thomas, Edward Horn, and Allan Nash.

6/28 Spoes returned as executed as to Paul Semonin, John Prood, Al Flieg, and Earl E. Smith.

6/29 Request for Issuance of Subpoenas for John King, L. E. Gardner, Stephen C. McCoy, Charles Welch, Richard K. Harb and Innes W. Dobbins, Jr. filed by Albert Reutlinger. Subpoenas signed, sealed and delivered to U. S. Marshal with checks made payable to witnesses in sum of $4.00 each.

6/29 Spoes returned as executed as to Wilbur Powell, Ed Anschutz, Robert E. Robinson.

6/30 Spoes returned as executed as to Stephen C. McCoy, Charles Welch and Innes W. Dobbins, Jr.

6/30 Plaintiff's Tendered Instructions filed.

7/ 1 Supplementary memorandum on motion for summary judgment filed by Defendants.

7/ 1 Objections to exhibits tendered by plaintiff pursuant to pre-trial order filed by defendants.

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7/ 5 Plaintiff's memorandum in response to defendant's motion for summary judgment filed, with Affidavits of A. B. Fortner, Jr. (with attachments) and Edwin D. Horn.

7/ 6 Amended Answer tendered by Defendants — NOT filed.

7/ 6 Affidavit of Albert F. Reutlinger filed by Defendants.

7/ 6 Spoes returned executed: Andrew Cowart, Howard Bolin, L. E. Gardner, John King, Richard K. Harb, William R. Rollins, Edward L. Akers, Neil G. Day, Harry R. Black, Stanley J. Mack.

7/ 8 ORDER dated 7/7/66 — hearing held 7/6/66 — defendants' motion for summary judgment sustained, counsel to prepare and tender FF/CL, and noting filing and tndering by defendants of affidavit and amended answer (tendered only). Copies to Attorneys Anderson, Hamilton and Reutlinger.

7/11 ORDER dated 7/11/66 setting aside order dated 7/7/66. Copies to Attorneys Anderson, Hamilton and Reutlinger.

7/11 Spoe to Michael Atlas returned unexecuted.

7/12 ORDER tendered by Plaintiff.

7/13 Spoe to M. R. Moreillon returned executed.

7/15 Plaintiff's Motion to enter order filing Affidavit and attachments thereto of Kenneth L. Anderson and the Affidavit of Herman Miles — filed.

7/15 Affidavit of Herman Miles and Affidavit of Kenneth L. Anderson w/attachments tendered.

7/21 Findings of Fact and Conclusions of Law tendered by Defendants.

9/ 7 MEMORANDUM OPINION dated 9/7/66 that plaintiff's motion to have the affidavits of Kenneth L. Anderson and Herman Miles filed is overruled.

1966

They may be tendered (2) Defendant's motion to have the Court order its amended answer tendered 7/6/66 filed of record is overruled. No order is entered on other pending motions, except on defendants' motion for summary judgment. This motion for summary judgment is sustained, and the complaint and the amended complaint are dismissed, plaintiff to pay all costs.

9/ 9 JUDGMENT dated 9/8/66 dismissing the complaint and amended complaint at cost of plaintiff. Copies mailed to Attorneys Anderson, Hamilton and Reutlinger.

9/ 9 Copies of memorandum opinion entered 9/7/66 mailed to Attorneys Anderson, Hamilton and Reutlinger.

9/16 Plaintiff's motion that Court modify its opinion and set aside its order of 9/7/66 and to set aside the Memo. Opinion and Judgment Dismissing Complaint and Amended Complaint entered 9/7/66 and the Judgment entered on 9/8/66 and to reconsider Court's ruling on defts' motion for summary judgment and set aside the sustaining of same — filed, with notice of hearing on September 30, 1966, at 2:00 p.m. Order tendered.

9/16 Affidavit of Kenneth L. Anderson dated Sept. 16, 1966, with attachments, filed.

9/16 Affidavit of A. Scott Hamilton, dated September 13, 1966, with attachments, filed.

9/16 Affidavit of Kenneth L. Anderson dated September 15, 1966, with attachments, filed.

9/16 Memorandum of Authorities on Plaintiff's Motions — filed.

9/28 Memorandum filed by Defendants with Affidavit of Albert F. Reutlinger.

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10/ 5 ORDER dated 10/5/66 that (1) Affidavit of Kenneth Anderson dated 7/15/66, and attached documents, and affidavit of Herman Miles dated 7/14/55, and attached documents, are filed of record, and to the extent necessary the Court's memorandum opinion entered 9/7/66 is so modified. (2) Plaintiff's motion to set aside memorandum opinion and judgment dismissing complaint and amended complaint and to reconsider Court's ruling on defendants' motion for summary judgment — is OVERRULED. Copies to Attorneys Sandidge and Andersonvand Reutlinger.

10/ 5 Affidavit of Kenneth L. Anderson that was tendered July 15, 1966, and attachments in folders marked I through IX tendered July 15, 1966 — filed pursuant to order of Court dated Oct. 5, 1966, referred to above.

10/ 5 Affidavit of Herman Miles with attachments that was tendered July 15, 1966 — filed pursuant to order of Court dated Oct. 5, 1966, referred to above.

10/ 6 Notice of Appeal by Fortner Enterprises, Inc., to U. S. Court of Appeals for 6th Circuit — filed. Copies mailed to Albert F. Reutlinger and Armer H. Mahan same date.

10/ 6 Appeal bond in amt of $250.00 dated Oct. 6, 1966, executed by Fortner Enterprises, Inc., (by Kenneth L. Anderson, its attorney) and by Fidelity & Deposit Company of Maryland — filed.

10/21 Copy of notice of appeal mailed to Mr. J. E. Rose, atty, 116 So. 5th Street, Louisville, Ky.

10/28 (4392-A) Request for Writ of Attachment against Louisville Gas & Electric Co. — filed by Mr. Reutlinger, atty. for U. S. Steel Homs Credit Corporation.

Docket Entries

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10/28	(4392-A) Affidavit of Albert F. Reutlinger dated Oct. 28, 1966 — filed by Mr. Reutlinger.
10/28	(4392-A) Order of Attachment — "On Affidavit", with Louisville Gas & Electric Company named as garnishee, in amount of $54,408.45 plus interest at the rate of 6% per annum from March 12, 1964, issued by Clerk. Original and 3 copies delivered to Marshal. (This order of attachment in favor of U. S. Steel Homes Credit Corporation on its judgment dated March 12, 1964).
11/ 2	4392-A Order of Attachment — on Affidavit returned as executed on 10/28/66 and 11/1/66.

COMPLAINT.

Fortner Enterprises, Inc. brings this action against the defendants named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This Compalint is filed and these proceedings are instituted against the above named defendants under Sections 4 and 16 of the Act of Congress of October 15, 1914, ch. 323, 38 Stat. 731, and 737, 15 U. S. Code, Sec. 14 and 26, as amended, commonly called the Clayton Act, to recover damages arising out of and to prevent, restrain and enjoin continuing violations by the above named defendants of Sections 1 and 2 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act.

2. Each of the defendants, United States Steel Corporation; and United States Steel Homes Credit Corporation transacts business and is found within the Western District of Kentucky.

3. Plaintiff, Fortner Enterprises, Inc., is now and was at all times mentioned herein a corporation incorporated under the laws of Kentucky with its chief place of business in Louisville, Jefferson County, Kentucky, said business being that of the development of subdivision properties and the sale of real estate and improvements thereon.

II

DEFINITIONS

4. Whenever used in this Complaint, the terms:

(a) United States Steel Homes means single family prefabricated dwellings consisting primarily of components produced and furnished by United States Steel Homes Division, United States Steel Corporation.

(b) Prefabricated dwellings are houses with the basic component parts fabricated and intended to be put together at the dwelling site.

III

DEFENDANTS

5. The defendant, United States Steel Corporation, is organized and exists under the laws of the State of Delaware and has its principal place of business in Pittsburg, Pennsylvania. Within the period of time covered by this Complaint the defendant, United States Steel Corporation, through its division United States Steel Homes Division, has engaged in the business of manufacturing, purchasing and selling on a nationwide basis prefabricated houses and component parts for dwelling houses constructed basically of steel and called United States Steel homes.

6. The defendant, United States Steel Homes Credit Corporation, is organized and exists under the laws of the State of Delaware and has its principal place of business in New York, New York. It is a wholly owned subsidiary of United States Steel Corporation. Within the period of time covered by this Complaint United States Steel Homes

Credit Corporation has engaged in the business of financing real estate upon which prefabricated houses are constructed.

7. The Acts alleged in this Complaint to have been done by each of the corporate defendants were authorized, ordered or done by the officers, agents, employees or representatives of such defendant while actively engaged in the management, direction and control of its affairs.

IV

NATURE OF TRADE AND COMMERCE

8. Within the period of time covered by this Complaint the defendant United States Steel Corporation through its division United States Steel Homes Division manufactured and purchased and sold component parts for United States Steel Homes at its factories and places of business throughout the United States, including its factory at New Albany, Indiana. Said United States Steel homes and the component parts thereof were shipped in interstate commerce from various factories and places of business of United States Steel Corporation to the plaintiff and others in Louisville, Jefferson County, Kentucky.

9. Substantial quantities and numbers of United States Steel Homes and their component parts have been shipped or transported into and sold in Louisville, Jefferson County, Kentucky from other states within the period of time covered by this Complaint.

10. Within the period of time covered by this Complaint, United States Steel Homes and component parts for prefabricated homes accounted for a substantial quantity of the prefabricated steel homes and their component parts shipped in interstate commerce into and sold in Louisville, Jefferson County, Kentucky.

11. Within the period of time covered by this Complaint the defendant, United States Steel Homes Credit Corporation, transacted business in various states throughout the United States including Louisville, Jefferson

County, Kentucky where it loaned sums of money and entered into contracts and loan agreements affecting the United States Steel Homes shipped and sold in interstate commerce as described in paragraphs 8 through 10 of this Complaint.

V

OFFENSES CHARGED

12. Beginning at least as early as October, 1960 and continuing to the present time, the defendants have engaged in a contract, combination and conspiracy in unreasonable restraint of and to monopolize the aforesaid interstate trade and commerce in prefabricated houses and their component parts in violation of Sections 1 and 2 of the Sherman Act.

13. The aforesaid contract, combination and conspiracy consisted of a continuing agreement and concert of action between the defendants to force corporations and individuals, including the plaintiff, as a condition to availing themselves of the services of United States Steel Homes Credit Corporation, to purchase at artifically high prices only United States Steel Homes which are manufactured by United States Steel Homes Division, United States Corporation.

14. On the 28th day of October, 1960, this plaintiff, in order to avail itself of the services of United States Steel Homes Credit Corporation, entered into a contract with the United States Steel Homes Credit Corporation by the terms of which said defendant agreed to loan this plaintiff certain sums of money, one of the conditions of that agreement being that plaintiff was required ". . . to complete development of the premises and to erect on each of said lots free from all mechanic's liens a prefabricated dwelling house manufactured by the United States Steel Homes Division, United States Steel Corporation." (A copy of said loan agreement is attached hereto and made a part hereof as if fully copied herein and is marked Exhibit A.)

15. After the aforementioned loan agreement was executed and this plaintiff had begun said housing develop-

ment in Louisville, Jefferson County, Kentucky, the defendant, United States Steel Homes Division, United States Steel Corporation, commenced furnishing this plaintiff with faulty, defective and unusable material for the construction of said houses. It was anticipated by the terms of the aforementioned loan agreement that this plaintiff would construct approximately one-hundred eighty-seven (187) houses in the total development, and after the construction of seventy (70) houses, because of the faulty and defective material furnished by the defendant, United States Steel Homes Division, United States Steel Corporation, this plaintiff has been unable to complete said project.

16. In order to effectuate the aforementioned contract, combination and conspiracy the defendant, United States Steel Homes Credit Corporation, has threatened and is continuing to threaten to foreclose the mortgage held by it under the terms of the aforementioned loan agreement, even though plaintiff's inability to continue performance has been directly caused by the illegal acts of the defendants. (A description of said mortgage property is contained in the copy of the mortgages attached hereto and is marked Exhibit B.) The threat to foreclose on the aforementioned mortgage is an imminent one as is evidenced by the attached letter addressed to the plaintiff from United States Steel Homes Credit Corporation (a copy of said letter is attached hereto as Exhibit C), and such foreclosure will do irreparable injury, harm and damage to the plaintiff should it be carried out pending the adjudication of this lawsuit.

17. As a direct and proximate result of the aforementioned contract, combination and conspiracy the defendants have caused the plaintiff:

A. To purchase United States Steel Homes at unreasonably high prices.

B. To expend additional sums on each house built to date to repair or replace the damage caused by the

faulty, defective and unusable material furnished by United States Steel Homes Division, United States Steel Corporation.

C. To be delayed in the completion of the homes planned to be built in the aforesaid development to the extent that plaintiff is now unable to go forward with the development.

D. To have lost profits on homes already built and to lose profits on the homes contemplated by the parties to be built which plaintiff has been unable to build, both in the amount of approximately $900.00 per each of the 187 houses, or a total of $168,300.00.

E. To have its reputation as a developer and builder irreparably damaged due to the inferior homes built as a result of the defective materials furnished plaintiff.

F. To be unable to purchase prefabricated steel homes or their component parts from other manufacturers.

WHEREFORE, plaintiff, Fortner Enterprises, Inc., demands:

1. Judgment against the defendants, United States Steel Corporation and United States Steel Homes Credit Corporation for treble the sum of $168,300.00, being the amount of damages plaintiff has incurred as a result of the defendants' illegal acts, a reasonable fee for the services of its attorneys in prosecuting this action, and its costs herein expended.

2. For a decree against the defendants permanently enjoining and prohibiting their enforcement of the provision or provisions of the aforementioned loan agreement which require plaintiff to construct the prefabricated houses in this development exclusively out of products furnished by United States Steel Homes Division, United States Steel Corporation.

3. That the plaintiff be awarded all other just and proper relief to which it may appear entitled.

Kenneth L. Anderson
A. Scott Hamilton, Jr.
Attorneys for Plaintiff.

EXHIBIT "A"

——CONFORMED COPY——

LOAN AGREEMENT

THIS AGREEMENT, made this 28th day of October, 1960, by and between FORTNER ENTERPRISES, INC., a corporation organized and existing under and by virtue of the laws of the State of Kentucky, (hereinafter called the "Borrower") and U. S. STEEL HOMES CREDIT CORPORATION, a corporation organized and existing under and by virtue of the laws of the State of Delaware, having an office in New Albany, Indiana, (hereinafter called the "Lender");

WITNESSETH:

WHEREAS, Borrower has acquired, or will acquire, a certain tract of land comprising approximately One Hundred Fifty-seven (157) undeveloped building lots and Thirty (30) fully developed building lots, all located in Golden Meadows Subdivision, Jefferson County, Kentucky, (hereinafter referred to as the "Premises"); and

WHEREAS, the Premises have been subdivided or will be subdivided into approximately One Hundred Eighty-seven (187) lots, which Borrower intends to develop by the installation on One Hundred Fifty-seven (157) of said lots of necessary land improvements, and to construct on each of said One Hundred Eighty-seven (187) of said lots single-family dwellings utilizing products of United States Steel

Homes Division, United States Steel Corporation (said lots being hereinafter referred to as the "Lots"); and

WHEREAS, Borrower has applied for a loan to assist in financing the acquisition and development of said Premises and the construction of dwellings thereon;

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and of other valuable considerations, the parties hereto agree as follows:

PART A.

1. The Borrower agrees to take and the Lender agrees to make (subject to this Agreement) a loan in the principal sum of TWO MILLION FIFTY-FIVE THOUSAND THREE HUNDRED DOLLARS ($2,055,300.00) (hereinafter called the "Loan") to be advanced as hereinafter provided, said Loan being evidenced by:

a. A promissory note duly executed by the Borrower in the principal amount of EIGHTY-EIGHT THOUSAND DOLLARS ($88,000.00), maturing December 31, 1961, and bearing interest at the rate of six per centum (6%) per annum computed from the date of each advance, said interest being payable monthly on the first day of each month (said note being hereinafter referred to as Land Note No. 1);

b. A promissory note duly executed by the Borrower in the principal amount of TWO HUNDRED THIRTY-ONE THOUSAND NINE HUNDRED TWENTY DOLLARS ($231,920.00), maturing December 31, 1962, and bearing interest at the rate of six per centum (6%) per annum computed from the date of each advance, said interest being payable monthly on the first day of each month (said note being hereinafter referred to as Land Note No. 2);

c. A promissory note duly executed by the Borrower in the principal amount of THREE HUNDRED SEVENTY-THREE THOUSAND TWO HUNDRED DOLLARS ($373,200.00), payable to the Lender or

order, maturing December 31, 1961, and bearing interest at the rate of six per centum (6%) per annum computed from the date of each advance (said note being hereinafter referred to as Construction Note No. 1);

d. A promissory note duly executed by the Borrower in the principal amount of ONE MILLION THREE HUNDRED SIXTY-TWO THOUSAND ONE HUNDRED EIGHTY DOLLARS ($1,362,180.00), payable to the Lender or order, maturing December 31, 1962, and bearing interest at the rate of six per centum (6%) per annum computed from the date of each advance (said note being hereinafter referred to as Construction Note No. 2);

e. A Mortgage Deed conveying the above described Premises as security for all of the above notes, which Mortgage Deed shall at all times constitute a valid and the only lien on the aforesaid Premises, except for taxes and assessments not overdue.

2. The Borrower agrees to do and perform the following acts and things:

a. To furnish Lender with executed copies of all contracts by and between Borrower and others for the site development of the Premises (hereinafter referred to as the "Development Contracts"), together with a detailed estimate by a registered professional engineer (hereinafter referred to as "Consulting Engineer") of the quantities, units and unit prices of the work to be performed under the Development Contracts;

b. To complete the development of the Premises and to erect on each of said Lots, free from all mechanics' liens, a prefabricated dwelling house manufactured by United States Steel Homes Division, United States Steel Corporation, (hereinafter called the "dwelling house") and to construct and install said improvements and to construct said dwelling houses strictly in accordance with the Development Contracts and work-

ing drawings prepared therefor and in accordance with all applicable ordinances and statutes, use restrictions of record and in accordance with the requirements of all regulatory authorities and in conformity with the requirements of the Federal Housing Administration (hereinafter referred to as "FHA");

c. To furnish Lender with satisfactory evidence that Workmen's Compensation Insurance coverage of Borrower and/or its subcontractors required by applicable law has been provided, together with certificates evidencing public liability and property damages insurance in the amounts of $100,000.00 each person and $300,000.00 each accident for injuries to persons, and $50,000.00 each accident for damage to property;

d. To furnish fire and extended coverage insurance on each of the dwelling houses, in amount, form and in companies satisfactory to Lender, which insurance shall be payable to the Borrower, with standard mortgagee endorsement attached making loss payable to the Lender or its assigns as mortgagee;

e. To pay all taxes and assessments which are delinquent or in collection;

f. To allow Lender and its agents, until such time as the Loan is paid in full, the right of entry and free access to the Premises, the right to inspect all work done, labor performed and materials furnished, and to inspect all books, contracts and records of Borrower insofar as the same relate to the Premises;

g. To furnish Lender, upon request, a current statement of financial condition with such supporting detail as may be required by Lender;

h. To indemnify and hold and save harmless Lender from any and all loss, cost, damage, liability and expense, which it may suffer or incur, by reason of the perfecting of statutory liens, against any or all of the premises described in the said mortgage, on account of

work or labor performed or on account of the furnishing of machinery, material and fuel;

i. To pay to the Lender on or before sixty (60) days from the date hereof, an Inspection Fee of One Hundred Dollars ($100.00);

j. To pay to the Lender as hereinafter provided, a Service Fee of one-half of one per centum (½ of 1%) of the total principal amount of the promissory notes hereinabove referred to.

3. The Lender may require the Borrower to obtain and attach to each application for an advance on account of the Loan, acknowledgments of payment and releases of liens down to the time of the making of such advance, from all contractors and subcontractors and materialmen covering all work, labor, machinery, materials and fuel, done, performed or furnished with respect to the development and in connection with the construction of any of the said dwelling houses.

4. Upon the occurrence of any of the following events:

a. The Borrower shall at any time prior to the completion of the said improvements and the said dwelling houses abandon the installation and/or construction thereof or shall cease work thereon for a period of more seven (7) days, stoppage by reason of strikes, labor disputes, shortages of materials and acts of God and other matters beyond its control excepted;

b. An order in aid of execution or attachment shall be served upon the Lender by any creditor of the Borrower and not released within five (5) days from the date thereof;

c. The Borrower shall fail to commence installation of said land improvements or the construction of said dwelling houses within thirty (30) days after the date of the Notes and Mortgage, or within such additional number of days as the Lender may grant in writing;

d. An event of default as defined in the said Mortgage shall occur and subsist for the period of time, if any, therein specified in respect thereof, and the Lender shall take any action to enforce its right under the said Mortgage or the Notes secured thereby; or

e. The Borrower shall otherwise fail to comply with the terms of this Agreement or with the terms and provisions of the Notes or the Mortgage;

then and in any such event, at the option of the Lender all obligation on its part to make further advances on account of the Loan shall cease, and the Lender may enter into possession of the premises and perform any and all work and labor necessary to complete said improvements and erect said dwelling houses substantially according to the Development Contract and the working drawings therefor and the applicable plans and description of materials and employ watchmen to protect the premises.

5. The Lender does not assume and is hereby expressly released and discharged from any and all liability and responsibility whatsoever, which might or could arise out of the disbursement of the Loan or as to the method, manner or application of such disbursement, or as to mechanics' or materialmen's liens or any other liens whatsoever which might attach to or be filed against the aforesaid premises.

6. Within ten (10) days from the date of the Mortgage, and in any event prior to the Lender's disbursing any portion of the Loan to the Borrower, the Borrower at its own cost and expense, will cause to be issued and delivered by a qualified title insurance company (hereinafter called the "Title Company") to the Lender a mortgagee's policy of title insurance in standard ATA form incorporating those provisions set forth in Exhibit "A" attached hereto and made a part hereof. At the option of the Lender, all disbursements of the said Loan may be made through and under the supervision of Title Company and the Borrower agrees to do all acts and things necessary to comply with

all conditions contained in the said policy, so that the Lender shall be entitled to the full benefit of the said policy with respect to all amounts disbursed on account of the said Loan.

PART B.

1. The proceeds of Land Note No. 1 and Land Note No. 2 shall be disbursed only after receipt by the Lender of the following:

a. Evidence that the Premises are served by all necessary utilities, are zoned for single-family dwellings, and that products of United States Steel Homes Division, United States Steel Corporation comply with applicable codes and ordinances;

b. Copy of the proposed record plat of the subdivision of the Premises, together with evidence that the subdivision as platted has been approved by FHA;

c. A detailed estimate prepared by the Consulting Engineer setting forth the estimated total cost of development of the Premises;

d. A copy of a mortgage take-out commitment by an investor and on terms acceptable to Lender in an amount sufficient to cover all mortgages originated on the dwelling houses to be erected on the Lots with the proceeds of the Construction Notes;

e. The mortgagee's policy of title insurance referred to in Item 6. of PART A. above;

f. Certified copy of a current financial statement of Borrower, satisfactory to Lender.

2. The proceeds of Land Note No. 1 shall be disbursed as follows:

a. The first advance shall be in the amount of SIXTY-THREE THOUSAND THREE HUNDRED TWENTY-FIVE DOLLARS ($63,325.00), plus the sum of TEN THOUSAND TWO HUNDRED SEVENTY-FIVE DOLLARS ($10,275.00), which latter sum repre-

senting the Service Fee of one-half of one per centum (½ of 1%) due by Borrower to Lender under the provisions of Item 2. j. of PART A. above shall be paid by Lender to itself for the account of Borrower in payment of said Service Fee, and shall be made at the time of loan closing.

b. The remaining proceeds of Land Note No. 1, in the amount of FOURTEEN THOUSAND FOUR HUNDRED DOLLARS ($14,400.00), shall be disbursed from time to time as hereinafter provided on the basis of certificates furnished Lender by the Consulting Engineer as to the dollar amount of the contract value of work in place on the sixteen (16) lots comprising Section 1-F of the Premises properly completed as of the date of such certification; provided, however, that prior to Lender disbursing or obligating itself in any manner to disburse said remaining proceeds of Land Note No. 1, or any of the other promissory notes referred to hereinabove, Borrower shall furnish Lender with the following:

(1) A certified copy of the recorded plats of subdivision of Sections 1-A, 1-B, 1-F, 1-G, and 4-A of the Premises;

(2) Copies of all contracts entered into by Borrower for the development of Section 1-F of the Premises;

(3) Signed copies of the performance bond or bonds, if any, entered into by Borrower with the appropriate public and municipal authorities for the completion of such improvements of said Section 1-F of the Premises as to which said authorities may require such bond or bonds;

(4) Copies of Commitments to Insure issued by FHA applicable to not less than forty (40) lots in Sections 1-A, 1-B, 1-F, 1-C, and 4-A of the Premises.

c. Any further sums of money in excess of the amounts disbursed under the provisions of paragraph

2. b., above, which shall be required to complete payment in full of the dollar amounts of the work in place necessary to the full completion of the development of Section 1-F of the Premises as set forth in the Development Contracts above referred to, shall be paid by the Borrower to said Title Company for disbursement through and under the supervision of said Title Company as certifications requiring such disbursement are submitted by said Consulting Engineer.

3. The proceeds of Land Note No. 2 shall be disbursed as follows:

a. The first advance shall be in the amount of ONE HUNDRED SEVEN THOUSAND ONE HUNDRED SEVENTY-FIVE DOLLARS ($107,175.00), and shall be made at time of loan closing;

b. The remaining proceeds, in the amount of ONE HUNDRED TWENTY-FOUR THOUSAND SEVEN HUNDRED FORTY-FIVE DOLLARS ($124,745.00), shall be disbursed from time to time, as hereinafter provided, on the basis of certifications furnished Lender by the Consulting Engineer as to the dollar amount of the contract value of work in place on any and all lots in the Premises excepting those lots situated in Sections 1-A, 1-B, 1-F, 1-C, and 4-A properly completed as of the date of such certification, provided, however, that prior to Lender disbursing or obligating itself in any manner to disburse any remaining portion of Land Note No. 2 or any portion of Construction Note No. 2, Borrower shall furnish Lender with the following:

(1) A certified copy of the recorded plat of subdivision of the entire Premises;

(2) Copies of all contracts entered into by Borrower for the development of the Premises;

(3) Signed copies of the performance bond, or bonds, if any, entered into by Borrower with the ap-

propriate public and municipal authorities for the completion of those of the improvements to the Premises for which said authorities may require such bond or bonds;

all provided, however, that disbursement of the remaining proceeds of Land Note No. 2, as provided above, shall be made only after Lender is in receipt of satisfactory evidence that Borrower has procured bona fide contracts for the purchase of houses to be constructed on not less than twenty-three (23) lots situated in Sections 1-A, 1-B, 1-F, 1-C, and 4-A of the Premises, has received a deposit of not less than Ninety-nine Dollars ($99.00) on each such contract, and has procured credit approval of the prospective purchaser under each such contract from the issuer of the mortgage take-out commitment referred to hereinabove;

c. Any further sums of money in excess of the amounts disbursed under the provisions of paragraph 3. b., above, which shall be required to complete payment in full of the dollar amounts of the work in place necessary to the full completion of the development of the Premises as set forth in the Development Contracts above referred to, shall be paid by the Borrower to said Title Company for disbursement through and under the supervision of said Title Company as certifications requiring such disbursement are submitted by said Consulting Engineer.

PART C.

1. For the purpose of allocating the proceeds of Construction Note No. 1 and Construction Note No. 2 to be advanced to the Borrower hereunder, the maximum amount of such proceeds to be allocated to each of the proposed Lots covered by this Agreement shall be, as to each said sublot, whichever amount is the lesser of either that amount set forth in Column (3) on Exhibit "B" attached hereto, or that amount arrived at by subtracting the pro-rata share of the proceeds of the Land Notes allocated each of

said sublots as set forth in Column (2) of said Exhibit "B", from eighty-five per centum (85%) of the valuation of the particular house and lot established by the FHA as the basis for the Commitment to Insure issued therefor; provided, however, that Lender shall not be obligated to make any disbursement of the proceeds of Construction Note No. 1 in connection with any dwelling unless the dwelling house package therefor shall have been shipped from United States Steel Homes Division on or before October 1, 1961, and shall not be obligated to make any disbursement of the proceeds of Construction Note No. 2 in connection with any dwelling unless the dwelling house package therefor shall have been shipped from United States Steel Homes Division on or before October 1, 1962.

2. Prior to Lender's obligating itself to make payment of any house shipped for account of Borrower and prior to Lender's making the first or any subsequent advance of the amount of the proceeds of the Loan allocated to a given house and Lot, Lender shall be in receipt of:

a. A copy of the FHA Conditional Commitment to Insure applicable thereto; and

b. Satisfactory evidence that the house and Lot in respect of which advance of loan proceeds is requested has been sold, that the purchaser thereof has made a cash deposit of not less than Ninety-nine Dollars ($99.00), and that a permanent investor has approved the purchaser as mortgagor in the amount of the mortgage to be originated and agrees to purchase said mortgage after it is duly endorsed for insurance by the FHA.

3. The proceeds of the Construction Notes as allocated to each of the proposed Lots shall be disbursed as follows:

a. The first advance shall be made when the concrete slab of a given house is installed and the Lender is in receipt of (a) a sworn statement by a Registered

Engineer showing that the slab in question is located wholly within the lot lines in accordance with the restrictions of record and zoning ordinances and (b) a copy of the FHA First Compliance Inspection Report showing no exceptions. The amount of the first advance shall be One Thousand Dollars ($1,000.00);

b. The second advance shall be made when as to a given house Lender is in receipt of a copy of the FHA Second Compliance Inspection Report showing no exceptions. The second advance shall be One Thousand Dollars ($1,000.00) plus a sum equal to the purchase price of the dwelling house package, including sales tax and freight, as shown by the applicable Treasury Invoice of the United States Steel Homes Division of United States Steel Corporation. From the amount of each such second advance Lender shall pay on behalf of Borrower the amount shown to be due by said Treasury Invoice, to United States Steel Homes Division of United States Steel Corporation, for the account of the Borrower;

c. The third advance shall be made when as to a given house the finished floor is laid, interior trim installed, kitchen units installed, furnace and hot water heater installed, bath fixtures installed, and interior painting is completed. The third advance shall be an amount equal to ninety per centum (90%) of the maximum amount of the Construction Note so allocated less the amounts of the first two advances described above;

d. The final advance shall be one hundred per centum (100%) of said proceeds less the aggregate total of the three previous advances and shall be made when as to a given house all construction is completed and the Lender is in receipt of the final FHA Compliance Inspection Report without exceptions save for those items for which suitable escrows have been established with the FHA.

PART D.

1. An individual written release of lien of mortgage from the U. S. Steel Homes Credit Corporation for each of the lots duly and regularly platted within the premises described in said mortgage shall be prepared in proper form and deposited with Title Company within sixty (60) days from the date of said mortgage. Upon proof that the shell of a prefabricated single-family dwelling house manufactured by the United States Steel Homes Division of United States Steel Corporation has been erected by Borrower upon any given lot, the applicable release of lien of mortgage shall be placed on record in the Records of Mortgages for Jefferson County, Kentucky, upon payment by Borrower to Title Company for the account of Lender:

a. The sum of Two Thousand Two Hundred Dollars ($2,200.00), to be applied first to reduction of principal of Land Note No. 1 until said note is paid in full, and thereafter to reduction of principal of Land Note No. 2;

b. An amount aggregating that portion of the proceeds of Construction Note No. 1 or Construction Note No. 2, and interest accrued thereon, which has been advanced to finance construction of a dwelling on said lot, for application to reduction of principal of Construction Note No. 1 or Construction Note No. 2, whichever is applicable.

2. This agreement, together with the notes and mortgage hereinabove described, constitute the entire agreement between the Borrower and the Lender and no representations or agreements, express or implied, have been made to or with the Borrower not herein contained. This Agreement shall not be amended or modified, nor may any of its terms or conditions be waived, except by an instrument in writing executed in the name of and on behalf of the Lender by one of its officers thereunto duly authorized.

3. Any notice or demand upon the Borrower shall be deemed to have been sufficiently given or served for all purposes hereof if mailed to Borrower by registered or

certified mail addressed to 4123 South Third Street, Louisville, Kentucky, or such other address as the Borrower may furnish to the Lender for such purpose. Any notice or demand upon the Lender shall be deemed to have sufficiently been given or served for all purposes hereof if delivered personally to its Vice President or mailed to it for the attention of its Vice President by registered mail addressed to it at Mutual Trust and Deposit Building, 322 Pearl Street, New Albany, Indiana, or at such other address as the Lender may furnish the Borrower for such purpose.

4. No right, interest or benefit of the Borrower hereunder may be assigned or otherwise transferred unless the written consent of the Lender shall first be obtained. Nothing in this Agreement, express or implied, shall confer upon any person, firm or corporation, other than the Lender, together with its successors or assigns, and the Borrower, together with its successors or assigns, subject to the limitation contained in the next preceding sentence, any right, remedy, or claim, legal or equitable, hereunder or by reason hereof; this Agreement and all of its covenants and conditions being intended to be and being for the sole and exclusive benefit of such persons specified as aforesaid.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate the day and year first above written.

FORTNER ENTERPRISES, INC.

By /s/ A. B. Fortner, Jr.
President

/s/ Edna Herberman
Secretary

U. S. STEEL HOMES CREDIT CORPORATION

By /s/ R. C. Dyas
Vice President

/s/ W. L. Rollins
Assistant Secretary

AMENDED EXHIBIT "A"

(Attached to and made a part of Loan Agreement dated October 28, 1960, between Fortner Enterprises, Inc. and U. S. Steel Homes Credit Corporation)

TITLE POLICY PROVISIONS

The Mortgage Deed executed contemporaneously herewith shall be insured to the amount of the Loan as a first and valid lien against the property therein described except for the following:

1. Taxes and assessments not yet due and payable.

2. Such state of facts as would be disclosed by an accurate survey and inspection of the premises.

NOTE: Subject to other provisions of the Policy, the maximum liability of the insurer may be limited to not less than the following respective amounts for the several lots designated on any duly recorded plat of the premises, namely:

Each Lot — $13,600.00

NOTE: The liability of the insurer under the policy shall be limited to actual amounts disbursed on the mortgage loan which the above referred to Mortgage Deed secures, but will increase as each disbursement is made up to the face amount of the policy.

AMENDED EXHIBIT "B"

(Attached to and made a part of Loan Agreement dated October 28, 1960, between Fortner Enterprises, Inc. and U. S. Steel Homes Credit Corporation)

Lot No.	Estimated FHA Valuation	(1) Maximum Total Loan (85% of Valuation)	(2) Amount of Loan Allocated to Land Notes	(3) Amount of Loan Allocated to Construction Notes
Each Lot	$16,000.00	$13,600.00	$ 1,720.00	$11,880.00

EXHIBIT "B"

RECORDED OCTOBER 28, 1960
JEFFERSON COUNTY, KENTUCKY
MGT. RECORD 395, PAGE 314

——CONFORMED COPY——

MORTGAGE DEED

THIS MORTGAGE, between Fortner Enterprises, Inc. a Kentucky corporation having a principal place of business in the City of Louisville, County of Jefferson, State of Kentucky, GRANTOR, and U. S. Steel Homes Credit Corporation, a Delaware corporation having a place of business in the City of New Albany, County of Floyd, and State of Indiana, GRANTEE:

WITNESSETH: Whereas GRANTOR desires to secure certain obligations to GRANTEE by mortgaging certain real estate;

NOW, THEREFORE, GRANTOR, for the purposes herein described, intending to be legally bound hereby, and in consideration of TEN and NO/100 DOLLARS ($10.00) received to its full satisfaction from GRANTEE, does hereby grant, bargain, sell, and convey to GRANTEE, its successors and assigns, the following described real estate, to-wit:

Situate in the County of Jefferson, State of Kentucky, and being more particularly described as follows, to wit:

PARCEL 1

Lot Nos. 29 and 72 as shown and designated on the plat of Golden Meadows Section 1-A as it is recorded in Plat

and Subdivision Book 15, Page 1, in the office of the Clerk of the County Court of Jefferson County, Kentucky;

PARCEL 2

Lot Nos. 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 48, 49, 50, 51, 52, 53, 54, and 55 as shown and designated on the plat of Golden Meadows Section 1-B as it is recorded in Plat and Subdivision Book 15, Page 33, in the office of the Clerk of the County Court of Jefferson County, Kentucky;

PARCEL 3

Lot Nos. 98, 99, 100, 101, 102, 103, and 104 as shown and designated on the plat of Golden Meadows Section 1-C as it is recorded in Plat and Subdivision Book 15, Page 42, in the office of the Clerk of the County Court of Jefferson County, Kentucky;

PARCEL 4

Lot Nos. 418, 419, and 710 as shown and designated on the plat of Golden Meadows Section 4-A as it is recorded in Plat and Subdivision Book 14, Page 81, in the office of the Clerk of the County Court of Jefferson County, Kentucky;

PARCEL 5

Beginning at a point in the South line of Constance Drive as shown on the plat of Golden Meadows Section 1-B, which plat is of record in Plat and Subdivision Book 15, Page 33 in the Jefferson County Court Clerk's Office, at a corner common to Golden Meadows Section 1-A as shown on the plat of same of record in Plat and Subdivision Book 15, Page 1 in said Clerk's Office, thence with the South line of said Constance Drive North 81°1[illegible] East 272.23 feet, thence South 8°45′ East 130.0 feet, thence North 81°15′ East 75.0 feet to a point in the center of a ditch, thence with said ditch South 8°45′ East 234.97 feet and South 5°22′ East 455.77 feet to the Northeasterly corner of the tract conveyed to the Rt. Rev. John Floresch re-

corded in Deed Book 3349, Page 439; thence with the North line of said tract North 65°58′ West 681.51 feet to the Southeasterly corner of Golden Meadows, Section 1-A hereinabove mentioned, thence with the Easterly line of said Golden Meadows, Section 1-A North 20°31′ East 516.90 feet to the place of beginning;

PARCEL 6

Beginning at a point in the Southerly line of the tract conveyed to Rt. Rev. John Floersch by deed of record in Deed Book 3349, Page 439, in the Jefferson County Court Clerk's Office, said point being the Northeasterly corner of Golden Meadows, Section 4-A as shown on the plat of same, which plat is of record in Plat and Subdivision Book 14, Page 81 in the aforementioned Clerk's Office, thence with the Southerly line of the tract conveyed to the Rt. Rev. John Floersch aforementioned, South 65°58′ East 756.25 feet and South 65°00′ East 140.97 feet, South 3°40′ West 386.18 feet to a corner of and in the line of the remaining lands of E. M. Houchin, thence with several lines of said Houchins North 65°00′ West 691.08 feet, South 20°31′ West 758.26 feet and North 63°25′ West 321.80 feet to the Southeasterly corner of Golden Meadows, Section 4-A hereinabove mentioned, thence with several lines of said Golden Meadows, Section 4-A as follows, North 20°31′ East 384.74 feet, North 69°01′ West 140.0 feet, North 20°31′ East 60.0 feet, South 69°01′ East 140.0 feet and North 20°31′ East 652.94 feet to the place of beginning;

PARCEL 7

Beginning at an iron pipe at the corner common to Golden Meadows, Section 1-B, the plat of which is recorded in Plat and Subdivision Book 15, Page 33 in the Jefferson County Clerk's Office, and Golden Meadows, Section 1-C as shown by the Revised plat of same of record in Plat and Subdivision Book 15, Page 42 in said Clerk's Office, thence with several lines of said Golden Meadows,

Section 1-C as follows, South 8°38′ East 673.92 feet, South 4°32′ West 175.69 feet, Sout' 25°02′ West 850.90 feet, North 65°00′ West 283.48 feet, North 84°30′ West 105.83 feet, North 34°18′ West 97.53 feet and North 86°21′ West 130.0 feet to a point in the center of a drainage ditch; thence with the center of said drainage ditch North 3°40′ East 45.47 feet, North 5°22′ West 974.10 feet and North 8°45′ West 234.97 feet to a point in the Southerly line of Golden Meadows, Section 1-B as hereinabove mentioned, thence with several lines of said Golden Meadows, Section 1-B as follows, North 81°15′ East 444.68 feet, North 8°38′ West 130.0 feet, North 81°15′ East 60.0 feet, South 8°38′ East 100.0 feet, North 81°22′ East 135.07 feet, South 8°45′ East 29.77 feet and North 81°15′ East 314.72 feet to the place of beginning.

TO HAVE AND TO HOLD the said premises, with all appurtenances, to GRANTEE, its successors and assigns, with covenants of General Warranty, to secure:

FIRST: Payment of a promissory note of even date herewith executed by GRANTOR in the sum of EIGHTY-EIGHT THOUSAND DOLLARS ($88,000.00), with interest at the rate of six per centum (6%) per annum computed from the date of each advance, said interest being payable on the first day of each month beginning January 1, 1961, it being expressly agreed in said note that said principal sum and interest then unpaid shall be due and payable on or before December 31, 1961, it being expressly agreed therein that the whole of said principal sum and interest then unpaid may be declared and become due and payable in the event of default as therein defined;

SECOND: Payment of a promissory note of even date herewith executed by GRANTOR in the sum of TWO HUNDRED THIRTY-ONE THOUSAND NINE HUNDRED TWENTY DOLLARS ($231,920.00), with interest at the rate of six per centum (6%) per annum computed

from the date of each advance, said interest being payable on the first day of each month beginning January 1, 1961, it being expressly agreed in said note that said principal sum and interest then unpaid shall be due and payable on or before December 31, 1962, it being expressly agreed therein that the whole of said principal sum and interest then unpaid may be declared and become due and payable in the event of default as therein defined;

THIRD: Payment of a promissory note of even date herewith executed by GRANTOR in the sum of THREE HUNDRED SEVENTY-THREE THOUSAND TWO HUNDRED DOLLARS ($373,200.00), with interest at the rate of six per centum (6%) per annum computed from the date of each advance, it being expressly agreed in said note that said principal sum together with said interest shall be due and payable on or before December 31, 1961, it being expressly agreed therein that the whole of said principal sum then unpaid may be declared and become due and payable in the event of default as therein defined;

FOURTH: Payment of a promissory note of even date herewith executed by GRANTOR in the sum of ONE MILLION THREE HUNDRED SIXTY-TWO THOUSAND ONE HUNDRED EIGHTY DOLLARS ($1,362,180.00), with interest at the rate of six per centum (6%) per annum computed from the date of each advance, it being expressly agreed in said note that said principal sum together with said interest shall be due and payable on or before December 31, 1962, it being expressly agreed therein that the whole of said principal sum then unpaid may be declared and become due and payable in the event of default as therein defined;

FIFTH: Payment by GRANTOR to GRANTEE of all sums expended or advanced by GRANTEE pursuant to this Mortgage or the Loan Agreement entered into between the parties of even date herewith;

SIXTH: Performance of each undertaking of GRANTOR contained herein, and performance of each undertaking of GRANTOR contained in said Loan Agreement;

SEVENTH: Payment by GRANTOR to GRANTEE of all other indebtedness, direct or contingent, now or hereafter owing by GRANTOR to GRANTEE.

FOR THE CONSIDERATION AFORESAID, GRANTOR covenants and agrees that:

FIRST: GRANTOR is lawfully seized in fee simple of said premises and has good right to sell and convey the same as aforesaid; said premises are free of all encumbrances, except liens for taxes and assessments not yet due and payable and any building and use restrictions of record; and GRANTOR will warrant and defend the title to the premises forever against the claims and demands of all persons whomsoever.

SECOND: GRANTOR shall keep all buildings and other insurable property now or hereafter erected or placed in or on said mortgaged property insured against fire and other hazards, as undertaken in the aforementioned Loan Agreement.

THIRD: GRANTOR will maintain the mortgaged property free from any waste or nuisance, and will do all things necessary to maintain said property in good condition, and will pay when due all claims for labor performed and material furnished, and will not permit any lien of mechanics or materialmen to attach to the mortgaged property.

FOURTH: GRANTOR will pay, before they become delinquent, all taxes and assessments lawfully imposed upon the mortgaged property, and will promptly at the request of GRANTEE deliver to GRANTEE the receipt for such payment.

FIFTH: If GRANTOR fails to pay any taxes, assessments, liens, or insurance premiums when the same are due

and payable, or otherwise defaults in the performance of any other covenant hereunder or under the said Loan Agreement, the security hereby created shall then become enforceable. GRANTEE may thereupon pay any such sums and perform any such covenants in respect of which there has been a default, and GRANTOR agrees promptly to repay any sums so advanced, without demand, with interest at the rate of six per centum (6%) per annum from the date of such advances, and such sums so advanced, with such interest, shall be secured hereby, but no such advance shall relieve GRANTOR of the consequences of any such default.

SIXTH: Should the security hereby created become enforceable as hereinabove provided, GRANTEE may declare all sums secured hereby immediately due and payable, and GRANTOR shall then pay said sums forthwith.

SEVENTH: Should the security hereby created become enforceable as hereinabove provided, GRANTEE may take possession of the mortgaged property, manage it and collect rents therefrom and apply same, less reasonable collection costs, upon the indebtedness hereby secured, and all leases and rents of the mortgaged property, after the security shall become enforceable, are hereby assigned and mortgaged to GRANTEE as additional security for the indebtedness secured hereby.

EIGHTH: GRANTOR will not claim the benefit of any stay, extension, appraisement, or redemption law now or at any time hereafter in effect.

PROVIDED, ALWAYS, that if GRANTOR pays to GRANTEE the principal and interest on said notes, when and as the same shall become due and payable, and pays any and all other sums payable under said notes or under this Mortgage or secured by this Mortgage, this conveyance shall thereupon become null and void, and in such case

GRANTEE shall execute and deliver to GRANTOR, at GRANTOR's cost, an appropriate release and discharge of this Mortgage in form to be recorded.

IN WITNESS WHEREOF, GRANTOR in pursuance of a resolution adopted by its Board of Directors on the 26th day of October, 1960, has hereunto caused its corporate name to be affixed and these presents to be subscribed by its President and Secretary this 28th day of October, 1960.

FORTNER ENTERPRISES, INC.
By /s/ A. B. Fortner, Jr.
President

And /s/ Edna Herberman
Secretary

STATE OF KENTUCKY
COUNTY OF JEFFERSON SS:

I, a Notary Public in and for the County and State aforesaid do certify that on this da ythe foregoing Mortgage from Fortner Enterprises, Inc., to U. S. Steel Homes Credit Corporation was produced before me and acknowledged and delivered before me by A. B. Fortner, Jr. as President of Fortner Enterprises, Inc., a corporation, party thereto, to be the act and deed of said corporation by him as its President, thereunto duly authorized, and the seal of said corporation as affixed to said deed was attested and proven before me by Edna Herberman, as its Secretary.

Given under my hand and seal of office this 28th day of October, 1960.

/s/ Samuel Steinfeld
Notary Public, Jefferson County, Kentucky.

My commission expires on the 6th day of August, 1964.

EXHIBIT "D-1"

——CONFORMED COPY——

LAND NOTE NO. 1
MORTGAGE NOTE

$88,000.00 Louisville, Kentucky
October 28, 1960

On or before December 31, 1961, for value received, the undersigned promises to pay to the order of U. S. STEEL HOMES CREDIT CORPORATION, a Delaware corporation, at its office in the City of New Albany, Indiana, or at such other place as the holder hereof may designate from time to time, in lawful money of the United States of America, the principal sum of EIGHTY-EIGHT THOUSAND DOLLARS ($88,000.00), with interest from the date hereof on the unpaid principal advanced at the rate of six per centum (6%) per annum, said interest being payable monthly on the first day of each month commencing January 1, 1961.

In certain events defined in the Mortgage hereinafter mentioned and in certain events defined in that certain Loan Agreement of even date herewith between the undersigned and U. S. Steel Homes Credit Corporation, the principal of and interest on this Note may be declared and become due and payable before the stated maturity hereof by any legal holder hereof, in the manner and with the effect set forth in said Mortgage, whereupon the undersigned agrees to mak payment of this Note accordingly.

In the event that any advances on account of the principal of this Note shall be made by payee subsequent to the occurrence of an event of default as defined in the said Mortgage or the said Loan Agreement, the making of such advances shall not be construed as a waiver of any such default, shall not in any manner alter, modify or amend

any of the terms or provisions hereof and shall not affect or modify the obligation of the undersigned to make payment of the principal of and interest on this Note in accordance with its terms.

The maker and endorsers and all parties to this instrument severally waive presentment for payment, protest, notice of non-payment of this instrument, demand, and all legal diligence in enforcing collection.

This Note is secured by a Mortgage of even date herewith from the undersigned to U. S. Steel Homes Credit Corporation, secured by real estate situated in the County of Jefferson and State of Kentucky, to which Mortgage reference is made for a description of the security and rights of the holder of this Note in respect thereof.

FORTNER ENTERPRISES, INC.

By /s/ A. B. Fortner, Jr.
President

ATTEST:

/s/ Edna Herberman
Secretary

EXHIBIT "D-2"

——CONFORMED COPY——

LAND NOTE NO. 2
MORTGAGE NOTE

$231,920.00 Louisville, Kentucky
October 28, 1960

On or before December 31, 1962, for value received, the undersigned promises to pay to the order of U. S. STEEL HOMES CREDIT CORPORATION, a Delaware corporation, at its office in the City of New Albany, Indiana, or at

such other place as the holder hereof may designate from time to time, in lawful money of the United States of America, the principal sum of TWO HUNDRED THIRTY-ONE THOUSAND NINE HUNDRED TWENTY DOLLARS ($231,920.00), with interest from the date hereof on the unpaid principal advanced at the rate of six per centum (6%) per annum, said interest being payable monthly on the first day of each month commencing January 1, 1961.

In certain events defined in the Mortgage hereinafter mentioned and in certain events defined in that certain Loan Agreement of even date herewith between the undersigned and U. S. Steel Homes Credit Corporation, the principal of and interest on this Note may be declared and become due and payable before the stated maturity hereof by any legal holder hereof, in the manner and with the effect set forth in said Mortgage, whereupon the undersigned agrees to make payment of this Note accordingly.

In the event that any advances on account of the principal of this Note shall be made by payee subsequent to the occurrence of an event of default as defined in the said Mortgage or the said Loan Agreement, the making of such advances shall not be construed as a waiver of any such default, shall not in any manner alter, modify or amend any of the terms or provisions hereof and shall not affect or modify the obligation of the undersigned to make payment of the principal of and interest on this Note in accordance with its terms.

The maker and endorsers and all parties to this instrument severally waive presentment for payment, protest, notice of non-payment of this instrument, demand, and all legal diligence in enforcing collection.

This Note is secured by a Mortgage of even date herewith from the undersigned to U. S. Steel Homes Credit Corporation, secured by real estate situated in the County of Jefferson and State of Kentucky, to which Mortgage

reference is made for a description of the security and rights of the holder of this Note in respect thereof.

FORTNER ENTERPRISES, INC.

By /s/ A. B. Fortner, Jr.
President

ATTEST:

/s/ Edna Herberman
Secretary

EXHIBIT "D-3"

——CONFORMED COPY——

CONSTRUCTION NOTE NO. 1
MORTGAGE NOTE

$373,200.00 Louisville, Kentucky
October 28, 1960

On or before December 31, 1961, for value received, the undersigned promises to pay to the order of U. S. STEEL HOMES CREDIT CORPORATION, a Delaware corporation, at its office in the City of New Albany, Indiana, or at such other place as the holder hereof may designate from time to time, in lawful money of the United States of America, the principal sum of THREE HUNDRED SEVENTY-THREE THOUSAND TWO HUNDRED DOLLARS ($373,200.00), with interest from the date hereof on the unpaid principal advanced at the rate of six per centum (6%) per annum.

In certain events defined in the Mortgage hereinafter mentioned and in certain events defined in that certain Loan Agreement of even date herewith between the under-

signed and U. S. Steel Homes Credit Corporation, the principal of and interest on this Note may be declared and become due and payable before the stated maturity hereof by any legal holder hereof, in the manner and with the effect set forth in said Mortgage, whereupon the undersigned agrees to make payment of this Note accordingly.

In the event that any advances on account of the principal of this Note shall be made by payee subsequent to the occurrence of an event of default as defined in the said Mortgage or the said Loan Agreement, the making of such advances shall not be construed as a waiver of any such default, shall not in any manner alter, modify or amend any of the terms or provisions hereof and shall not affect or modify the obligation of the undersigned to make payment of the principal of and interest on this Note in accordance with its terms.

The maker and endorsers and all parties to this instrument severally waive presentment for payment, protest, notice of non-payment of this instrument, demand, and all legal diligence in enforcing collection.

This Note is secured by a Mortgage of even date herewith from the undersigned to U. S. Steel Homes Credit Corporation, secured by real estate situated in the County of Jefferson and State of Kentucky, to which Mortgage reference is made for a description of the security and rights of the holder of this Note in respect thereof.

FORTNER ENTERPRISES, INC.

By /s/ A. B. Fortner, Jr.
President

ATTEST:

/s/ Edna Herberman
Secretary

EXHIBIT "D-4"

—CONFORMED COPY—

CONSTRUCTION NOTE NO. 2
MORTGAGE NOTE

$1,362,180.00 Louisville, Kentucky
October 28, 1960

On or before December 31, 1962, for value received, the undersigned promises to pay to the order of U. S. STEEL HOMES CREDIT CORPORATION, a Delaware corporation, at its office in the City of New Albany, Indiana, or at such other place as the holder hereof may designate from time to time, in lawful money of the United States of America, the principal sum of ONE MILLION THREE HUNDRED SIXTY-TWO THOUSAND ONE HUNDRED EIGHTY DOLLARS ($1,362,180.00), with interest from the date hereof on the unpaid principal advanced at the rate of six per centum (6%) per annum.

In certain events defined in the Mortgage hereinafter mentioned and in certain events defined in that certain Loan Agreement of even date herewith between the undersigned and U. S. Steel Homes Credit Corporation, the principal of and interest on this Note may be declared and become due and payable before the stated maturity hereof by any legal holder hereof, in the manner and with the effect set forth in said Mortgage, whereupon the undersigned agrees to make payment of this Note accordingly.

In the event that any advances on account of the principal of this Note shall be made by payee subsequent to the occurrence of an event of default as defined in the said Mortgage or the said Loan Agreement, the making of such advances shall not be construed as a waiver of any such default, shall not in any manner alter, modify or amend any of the terms of provisions hereof and shall not

affect or modify the obligation of the undersigned to make payment of the principal of and interest on this Note in accordance with its terms.

The maker and endorsers and all parties to this instrument severally waive presentment for payment, protest, notice of non-payment of this instrument, demand, and all legal diligence in enforcing collection.

This Note is secured by a Mortgage of even date herewith from the undersigned to U. S. Steel Homes Credit Corporation, secured by real estate situated in the County of Jefferson and State of Kentucky, to which Mortgage reference is made for a description of the security and rights of the holder of this Note in respect thereof.

FORTNER ENTERPRISES, INC.
By /s/ A. B. Fortner, Jr.
President

ATTEST:

/s/ Edna Herberman
Secretary

EXHIBIT "Y"

REGISTERED MAIL — RETURN RECEIPT REQUESTED

July 12, 1962

Mr. A. B. Fortner, Jr., President
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

Dear Mr. Fortner:

Re: Loan Nos. 1568 and 1602

Reference is made to the subject loans which were consummated with your company under Loan Agreements

dated October 28, 1960, and August 2, 1961, respectively, and which are evidenced by the following notes with outstanding balances and which are secured by the following mortgages:

Loan No. 1568

1. Land Note No. 2 dated October 28, 1960, maturing December 31, 1962.

2. Construction Note No. 1 dated October 28, 1960, which note, as extended, matured June 1, 1962.

3. Construction Note No. 2 dated October 28, 1960, maturing December 31, 1962.

4. Mortgage Deed dated October 28, 1960, securing the aforementioned notes.

Loan No. 1602

1. Land Note dated August 2, 1961, maturing December 31, 1962.

2. Collateral Note dated August 2, 1961, maturing December 31, 1962.

3. Mortgage Deed dated August 2, 1961, securing the aforementioned notes.

In view of your failure to pay the outstanding balance on Construction Note No. 1 on or before maturity and in view of your further failure to pay interest on the Land Notes evidencing both loans as required under the provisions of the Notes, Mortgages, and Loan Agreements, the amounts outstanding under all Notes evidencing your loans, together with the interest accrued thereon, are hereby declared to be due and payable pursuant to the provisions of said Notes, Mortgages and Loan Agreements and demand for payments thereof is made herewith.

There is set forth below the outstanding principal balance due on all notes, and interest accrued thereon through July 12, 1962, and the daily interest accrual rate:

Note	Loan	Principal Outstanding	Interest accrued through 7/12/62	Daily Interest Accrual
Land #2	1568	$183,157.60	$2,520.39	$30.53
Construction #1	1568	32,652.00	1,053.60	5.44
Construction #2	1568	82,435.45	2,902.76	12.59
Land	1602	52,400.00	681.20	8.73
Collateral	1602	2,950.00		8.73

It will be appreciated if you will promptly remit to this office the above amounts in full payment of your obligations in order to avoid the necessity of placing this matter in the hands of our attorney for collection.

WLR/df

Very truly yours,

/s/ W. L. Rollins
W. L. Rollins
Assistant General Manager

CC: Mr. A. F. Reutlinger
Middleton, Seelbach, Wolford, Willis & Cochran
501 South Second Street
Louisville, Kentucky

Messrs. R. C. Dyas
D. H. Boyd
H. R. Black
J. C. Bird

DEMAND FOR JURY TRIAL.

TO: United States Steel Corporation and
United States Steel Homes Credit Corporation
c/o C. T. Corporation
Kentucky Home Life Building
Louisville 2, Kentucky
(Agent for Service of Process)

Middleton, Seelbach, Wolford, Willis & Cochran
501 South Second Street
Louisville 2, Kentucky
Attorneys for Defendants

Plaintiff, Fortner Enterprises, Inc., hereby demands trial by jury of all issues in the above styled action.

/s/ Kenneth L. Anderson
/s/ A. Scott Hamilton, Jr.
ATTORNEYS FOR PLAINTIFF

ANSWER AND COUNTER-CLAIM.

ANSWER

United States Steel Corporation, a New Jersey corporation, incorrectly designated in the complaint as a Delaware corporation, and U. S. Steel Homes Credit Corporation, incorrectly designated in the complaint as United States Steel Homes Credit Corporation, for answer to the complaint:

FIRST DEFENSE

1. Deny the allegations of Paragraph 1 of the complaint except they admit plaintiff seeks to invoke jurisdiction herein on the basis of the statutory provisions mentioned in said Paragraph 1 of the complaint.

2. Deny the allegation that United States Steel Corporation is organized under the laws of the State of Delaware found in Paragraph 5 of the complaint and further deny

that the defendant United States Steel Corporation has been engaged in the business of manufacturing, purchasing and selling, on a nation wide basis, prefabricated houses and component parts. United States Steel Corporation affirmatively states that it has engaged in the business of manufacturing, purchasing and selling components parts for prefabricated houses and in some parts of the United States, all of which are located east of the Rocky Mountains, except Texas and north of the tier of states along the Gulf of Mexico. The defendants further deny the allegations found in Paragraph 5 of the complaint to the effect that the prefabricated houses and component parts thereof are constructed basically of steel, affirmatively pleading in this regard that materials other than steel are principally employed therein.

3. Deny the allegations found in Paragraph 7 of the complaint.

4. Deny the allegations found in Paragraph 8 of the complaint, but allege that within the period of time covered by the complaint, the defendant United States Steel Corporation, through its United States Steel Homes Division, manufactured and purchased components parts for United States Steel Homes at its factory at New Albany, Indiana, and that United States Steel Homes Division shipped component parts for United States Steel Homes in interstate commerce from its factory at New Albany, Indiana to the plaintiff and others in Louisville, Jefferson County, Kentucky.

5. Deny the allegations found in Paragraph 9 of the complaint, but allege that United States Steel Homes Division has shipped or transported into and sold component parts for United States Steel Homes in Louisville, Jefferson County, Kentucky from its New Albany, Indiana factory within the period of time covered by the complaint.

6. Deny the allegations found in Paragraph 10 of the complaint.

7. Deny the allegations found in Paragraph 11 of the complaint, but allege that U. S. Steel Homes Credit Corporation transacted business in various states of the United States, and in Louisville, Jefferson County, Kentucky, where it loaned sums of money and entered into contracts and loan agreements affecting the components of the United States Steel Homes shipped and sold in interstate commerce.

8. Deny the allegations found in Paragraph 12 of the complaint.

9. Deny the allegations found in Paragraph 13 of the complaint.

10. Deny the allegations found in Paragraph 14 of the complaint, except that they admit plaintiff entered into a contract with defendant U. S. Steel Homes Credit Corporation, whereby plaintiff borrowed certain sums of money from U. S. Steel Homes Credit Corporation, and that among other things, said agreement provided that the plaintiff agreed "To complete the development of the Premises and to erect on each of said Lots, free from all mechanics' liens, within one year of the date of the Notes and Mortgage, a prefabricated dwelling house manufactured by United States Steel Homes Division, United States Steel Corporation . . .", as is more fully set out in Exhibit A to the complaint.

11. Deny the allegations found in Paragraph 15 of the complaint, except that they allege that the aforementioned loan agreement contemplated that the plaintiff would construct in the Golden Meadows Subdivision, Jefferson County, Kentucky, approximately 186 single-family dwellings utilizing products of United States Steel Homes Division, United States Steel Corporation.

12. Deny the allegations found in Paragraph 16 of the complaint.

13. Deny the allegations found in Paragraph 17 of the complaint.

COUNTER-CLAIM

U. S. Steel Homes Credit Corporation for counter-claim against the plaintiff states:

1. Heretofore on or about October 28, 1960, plaintiff executed and delivered to U. S. Steel Homes Credit Corporation its three promissory notes, each dated October 28, 1960 and further described below:

(a) One note mentioned above is in the face amount of $231,920 and bears interest at the rate of 6% per annum of the unpaid balance thereof. After certain advances by U. S. Steel Homes Credit Corporation and partial repayment by the plaintiff, there is presently outstanding on this note an unpaid balance of $169,957.60. As of September 6, 1962, this note had accrued interest charges of $4,170.47 and thereafter the daily accrual of interest is $28.33. A photostatic copy of said note is filed herewith as a part hereof marked for reference "Land Note Number 2, 1960."

(b) The second note mentioned above is in the face amount of $373,200 and bears interest at the rate of 6% per annum on the unpaid balance thereof. After certain advances by U. S. Steel Homes Credit Corporation and partial repayment by the plaintiff, there is presently outstanding on this note an unpaid balance of $25,402.50. As of September 6, 1962, this note had accrued interest charges of $1,043.64 and thereafter the daily accrual of interest is $4.23. A photostatic copy of said note is filed herewith as a part hereof marked for reference "Construction Note Number 1, 1960."

(c) The third note mentioned above is in the face amount of $1,362,180 and bears interest at the rate of 6% per annum on the unpaid balance thereof. After certain advances by U. S. Steel Homes Credit Corporation and partial repayment by the plaintiff, there is presently outstanding on this note an unpaid balance of $53,334.50. As of September 6, 1962, this note had

accrued interest charges of $2,671.30 and thereafter the daily accrual of interest is $8.89. A photostatic copy of said note is filed herewith as a part hereof marked for reference "Construction Note Number 2, 1960."

2. As security for the three notes mentioned in Paragraph 1 above, plaintiff executed and delivered to U. S. Steel Homes Credit Corporation a mortgage under date of October 28, 1960 now of record in Mortgage Book 395, Page 314 in the office of the Clerk of the Jefferson County Court, Kentucky. This mortgage encumbers certain real property in Jefferson County, Kentucky as more fully set forth therein. A photostatic copy of said mortgage is filed herewith and marked for reference "Exhibit Mortgage, 1960."

3. Since the recording of the mortgage described in Paragraph 2 immediately above, certain properties have been released from the encumbrance of such mortgage and are now no longer affected thereby. The properties still encumbered by the mortgage mentioned in Paragraph 2 above, located in Jefferson County, Kentucky, may be described as:

Parcel 1.

BEING Lots No. 29 and 72, as shown and designated on the Plat of GOLDEN MEADOWS, SECTION 1-A, as it is recorded in Plat and Subdivision Book 15, Page 1, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.

Parcel 2.

BEING Lots No. 22, 23, 24, 48, 49, 53, 54, and 55, as shown and designated on the Plat of GOLDEN MEADOWS, SECTION 1-B, as it is recorded in Plat and Subdivision Book 15, Page 33, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.

Parcel 3.

BEING Lots No. 98, 99, 100, 101, 102, and 103, as shown and designated on the Plat of GOLDEN MEADOWS, SECTION 1-C, as it is recorded in Plat and Subdivision Book 15, Page 42, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.

Parcel 4.

BEING Lots No. 418 and 419, as shown and designated on the Plat of GOLDEN MEADOWS, SECTION 4-A, as it is recorded in Plat and Subdivision Book 14, Page 81, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.

Parcel 5. (Formerly Parcel 6)

BEGINNING at a point in the Southerly line of the tract conveyed to Rt. Rev. John Floersh by Deed of record in Deed Book 3349, Page 439, in the Jefferson County Court Clerk's Office, said point being the Northeasterly corner of Golden Meadows, Section 4-A, as shown on the plat of same, which plat is of record in Plat and Subdivision Book 14, Page 81, in the aforementioned Clerk's Office; thence with the Southerly line of the tract conveyed to the Rt. Rev. John Floersh aforementioned, South 65 degrees 58 minutes East 756.25 feet and South 65 degrees 00 minutes East 140.97 feet, South 3 degrees 40 minutes west 386.18 feet to a corner of and in the line of the remaining lands of E. M. Houchin; thence with several lines of said Houchins, North 65 degrees 00 minutes West 691.08 feet, South 20 degrees 31 minutes West 758.26 feet, and North 63 degrees 25 minutes West 321.80 feet to the Southeasterly corner of Golden Meadows, Section 4-A hereinabove mentioned; thence with several lines of said Golden Meadows, Section 4-A as follows: North 20 degrees 31 minutes East 384.74 feet, North 69 degrees 01 minutes West 140.0 feet, North 20 degrees 31 minutes East 60.0

feet, South 69 degrees 01 minute East 140.0 feet, and North 20 degrees 31 minutes East 652.94 feet to the place of beginning.

Parcel 6. (Formerly Parcel 7).

BEING Lot 78, Lots 85 through 97, inclusive, Lot 175, Lots 177 through 181, inclusive, Lots 183 through 185, inclusive, Lots 191, 192, and 194, Lots 197 through 201, inclusive, Lots 203 through 207, inclusive, Lots 213, 214, and 216, Lot 390, Lots 392 through 409, inclusive, Lots 411 and 412, Lots 474 through 483, inclusive, Golden Meadows, Section 1-D, of record in Plat and Subdivision Book 18, Page 2, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.

4. The mortgage described in Paragraph 2 above constitutes a lien on the property described in Paragraph 3 above prior and superior to all other liens on the property, except any liens for taxes.

5. In accordance with the terms of the notes and mortgage mentioned in Paragraphs 1 and 2 above, plaintiff is now indebted to U. S. Steel Homes Credit Corporation by way of principal the aggregate sum of $248,694.60, together with appropriate interest thereon. Some of this principal and interest according to the terms of said notes and mortgage is now immediately due and payable. Despite requests therefor, such has not been paid. In accordance with the precipitation clause in said notes and mortgage, U. S. Steel Homes Credit Corporation now elects to declare plaintiff's entire indebtedness in the aggregate sum of $248,694.60 immediately due and payable, together with accrued interest in the aggregate amount of $7,885.41 to September 6, 1962 with daily accrual of interest thereafter in the amount of $41.45 until paid.

6. Louisville Mortgage Service Company may be claiming an interest in Lot 205, Golden Meadows, Section 1-D, by virtue of a mortgage in its favor dated August 29, 1962

of record in Mortgage Book 523, Page 126, in the Office of the Clerk of the Jefferson County Court, Kentucky.

7. Heretofore on or about August 2, 1961, plaintiff executed and delivered to U. S. Steel Homes Credit Corporation its two promissory notes, each dated August 2, 1961 and further described below:

(a) One note mentioned above is in the face amount of $59,000 and bears interest at the rate of 6% per annum on the unpaid balance thereof. After certain advances by U. S. Steel Homes Credit Corporation and partial repayment by the plaintiff, there is presently outstanding on this note an unpaid balance of $52,400. As of September 6, 1962, this note had accrued interest charges of $1,170.26 and thereafter the daily accrual of interest is $8.73. A photostatic copy of said note is filed herewith as a part hereof marked for reference "Land Note, 1961."

(b) The other note mentioned above is in the face amount of $2,950 and bears no interest until maturity. A photostatic copy of said note is filed herewith as a part hereof marked for reference "Collateral Note, 1961."

8. As security for the two notes mentioned in Paragraph 7 above, plaintiff executed and delivered to U. S. Steel Homes Credit Corporation a mortgage under date of August 2, 1961 now of record in Mortgage Book 444, Page 88, in the office of the Clerk of the Jefferson County Court, Kentucky. This mortgage encumbers certain real property in Jefferson County, Kentucky as more fully set forth therein. A photostatic copy of said mortgage is filed herewith and marked for reference "Exhibit Mortgage 1961."

9. Since the recording of the mortgage described in Paragraph 8 immediately above, certain properties have been released from the encumbrance of such mortgage and are now no longer affected thereby. The properties still encumbered by the mortgage mentioned in Paragraph 8

above, located in Jefferson County, Kentucky, may be described as:

Parcel 1.

BEING Lot Number 271, as shown and designated on the Plat of GOLDEN MEADOWS, SECTION 2-A, as it is recorded in Plat and Subdivision Book 13, Page 97, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.

Parcel 2.

BEING Lots Number 360 and 362, as shown and designated on the Plat of GOLDEN MEADOWS, SECTION 2-B-1, as it is recorded in Plat and Subdivision Book 15, Page 14, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.

Parcel 3.

BEING Lots Number 298, 299, 300, 301, 302, 303, 318, 320, 321, 322, 326, 327, 329, 330, 331, 332, 333, 334, 337, 338, 346, 347, 350, 351, 352, and 369, as shown and designated on the Plat of GOLDEN MEADOWS, SECTION 2-B-2, as it is recorded in Plat and Subdivision Book 16, Page 41, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.

10. The mortgage described in Paragraph 8 above constitutes a lien on the property described in Paragraph 9 above prior and superior to all other liens on the property, except any liens for taxes.

11. In accordance with the terms of the notes and mortgage mentioned in Paragraphs 7 and 8 above, plaintiff is now indebted to U. S. Steel Homes Credit Corporation by way of principal the aggregate sum of $55,350, together with appropriate interest thereon. Some of this interest according to the terms of said notes and mortgage was due and payable on or before July 12, 1962. Despite

requests therefor, such has not been paid. In accordance with the precipitation clause in said notes and mortgage U. S. Steel Homes Credit Corporation elected, on July 12, 1962, to declare plaintiff's entire indebtedness in the aggregate sum of $55,350 immediately due and payable, together with accrued interest in the amount of $1,198.29 to September 6, 1962 with daily accrual of interest thereafter in the amount of $9.22 until paid.

12. Louisville Mortgage Service Company may be claiming an interest in Parcel 1 described in Paragraph 9 above, by virtue of a mortgage in its favor dated August 29, 1962 of record in Mortgage Book 523, Page 124, in the Office of the Clerk of Jefferson County Court, Kentucky.

WHEREFORE, the defendants, and each of them, pray the complaint against them be dismissed. The defendant, U. S. Steel Homes Credit Corporation, prays for judgment against the plaintiff in the amount of $313,128.30, representing principal in the amount of $304,044.60 and accrued interest in the amount of $9,033.70 and for a judgment of daily accrual of interest in the amount of $50.67 from and after September 6, 1962 until paid, that it have a lien prior and superior to all other liens on said real property presently encumbered by the two mortgages mentioned in the Counter-Claim, that Louisville Mortgage Service Company mentioned in Paragraphs 6 and 12 of the Counter-Claim, if it be made party to the within action, appear and set forth any claims that it may have as to the real property described above or upon its failure to do so be forever barred, that the liens of U. S. Steel Homes Credit Corporation be enforced and the said real property to which those respective liens attach be sold by order of this court free and clear of all liens and claims, except easements and restrictions of record, and taxes not yet due and payable and the proceeds thereof be applied toward payment of the U. S. Steel Homes Credit Corporation's judgment against plaintiff. The defendants, and each of them, further pray for

their costs herein expended and for all other relief to which they may appear to be entitled.

Albert F. Reutlinger
Attorney for Defendants
501 South Second Street
Louisville 2, Kentucky
584-1135

Middleton, Seelbach, Wolford,
Willis and Cochran
Of Counsel

MORTGAGE NOTE

$231,920.00 Louisville, Kentucky
October 28, 1960

On or before December 31, 1962, for value received, the undersigned promises to pay to the order of U. S. STEEL HOMES CREDIT CORPORATION, a Delaware corporation, at its office in the City of New Albany, Indiana, or at such other place as the holder hereof may designate from time to time, in lawful money of the United States of America, the principal sum of TWO HUNDRED THIRTY-ONE THOUSAND NINE HUNDRED TWENTY DOLLARS ($231,920.00), with interest from the date hereof on the unpaid principal advanced at the rate of six per centum (6%) per annum, said interest being payable monthly on the first day of each month commencing January 1, 1961.

In certain events defined in the Mortgage hereinafter mentioned and in certain events defined in that certain Loan Agreement of even date herewith between the undersigned and U. S. Steel Homes Credit Corporation, the principal of and interest on this Note may be declared and become due and payable before the stated maturity hereof by any legal holder hereof, in the manner and with the

effect set forth in said Mortgage, whereupon the undersigned agrees to make payment of this Note accordingly.

In the event that any advances on account of the principal of this Note shall be made by payee subsequent to the occurrence of an event of default as defined in the said Mortgage or the said Loan Agreement, the making of such advances shall not be construed as a waiver of any such default, shall not in any manner alter, modify or amend any of the terms or provisions hereof and shall not affect or modify the obligation of the undersigned to make payment of the principal of and interest on this Note in accordance with its terms.

The maker and endorsers and all parties to this instrument severally waive presentment for payment, protest, notice of non-payment of this instrument, demand, and all legal diligence in enforcing collection.

This Note is secured by a Mortgage of even date herewith from the undersigned to U. S. Steel Homes Credit Corporation, secured by real estate situated in the County of Jefferson and State of Kentucky, to which Mortgage reference is made for a description of the security and rights of the holder of this Note in respect thereof.

FORTNER ENTERPRISES, INC.

By /s/ A. B. Fortner
President

ATTEST:

/s/ Edna Herberman
Secretary

Land Note Number 2, 1960

MORTGAGE NOTE

$373,200.00 Louisville, Kentucky
October 28, 1960

On or before December 31, 1961, for value received, the undersigned promises to pay to the order of U. S. STEEL

HOMES CREDIT CORPORATION, a Delaware corporation, at its office in the City of New Albany, Indiana, or at such other place as the holder hereof may designate from time to time, in lawful money of the United States of America, the principal sum of THREE HUNDRED SEVENTY-THREE THOUSAND TWO HUNDRED DOLLARS ($373,200.00), with interest from the date hereof on the unpaid principal advanced at the rate of six per centum (6%) per annum.

In certain events defined in the Mortgage hereinafter mentioned and in certain events defined in that certain Loan Agreement of even date herewith between the undersigned and U. S. Steel Homes Credit Corporation, the principal of and interest on this Note may be declared and become due and payable before the stated maturity hereof by any legal holder hereof, in the manner and with the effect set forth in said Mortgage, whereupon the undersigned agrees to make payment of this Note accordingly.

In the event that any advances on account of the principal of this Note shall be made by payee subsequent to the occurrence of an event of default as defined in the said Mortgage or the said Loan Agreement, the making of such advances shall not be construed as a waiver of any such default, shall not in any manner alter, modify or amend any of the terms or provisions hereof and shall not affect or modify the obligation of the undersigned to make payment of the principal of and interest on this Note in accordance with its terms.

The maker and endorsers and all parties to this instrument severally waive presentment for payment, protest, notice of non-payment of this instrument, demand, and all legal diligence in enforcing collection.

This Note is secured by a Mortgage of even date herewith from the undersigned to U. S. Steel Homes Credit Corporation, secured by real estate situated in the County of Jefferson and State of Kentucky, to which Mortgage

reference is made for a description of the security and rights of the holder of this Note in respect thereof.

FORTNER ENTERPRISES, INC.
By /s/ A. B. Fortner
President

ATTEST:
/s/ Edna Herberman
Secretary

Construction Note Number 1, 1960

MORTGAGE NOTE

$1,362,180.00 Louisville, Kentucky
October 28, 1960

On or before December 31, 1962, for value received, the undersigned promises to pay to the order of U. S. STEEL HOMES CREDIT CORPORATION, a Delaware corporation, at its office in the City of New Albany, Indiana, or at such other place as the holder hereof may designate from time to time, in lawful money of the United States of America, the principal sum of ONE MILLION THREE HUNDRED SIXTY-TWO THOUSAND ONE HUNDRED EIGHTY DOLLARS ($1,362,180.00), with interest from the date hereof on the unpaid principal advanced at the rate of six per centum (6%) per annum.

In certain events defined in the Mortgage hereinafter mentioned and in certain events defined in that certain Loan Agreement of even date herewith between the undersigned and U. S. Steel Homes Credit Corporation, the principal of and interest on this Note may be declared and become due and payable before the stated maturity hereof by any legal holder hereof, in the manner and with the effect set forth in said Mortgage, whereupon the undersigned agrees to make payment of this Note accordingly.

In the event that any advances on account of the principal of this Note shall be made by payee subsequent to the occurrence of an event of default as defined in the said Mortgage or the said Loan Agreement, the making of such advances shall not be construed as a waiver of any such default, shall not in any manner alter, modify or amend any of the terms or provisions hereof and shall not affect or modify the obligation of the undersigned to make payment of the principal of and interest on this Note in accordance with its terms.

The maker and endorsers and all parties to this instrument severally waive presentment for payment, protest, notice of non-payment of this instrument, demand, and all legal diligence in enforcing collection.

This Note is secured by a Mortgage of even date herewith from the undersigned to U. S. Steel Homes Credit Corporation, secured by real estate situated in the County of Jefferson and State of Kentucky, to which Mortgage reference is made for a description of the security and rights of the holder of this Note in respect thereof.

FORTNER ENTERPRISES, INC.

By /s/ A. B. Fortner
President

ATTEST:

/s/ Edna Herberman
Secretary

Construction Note Number 2, 1960

MORTGAGE DEED

BOOK 395 PAGE 314

THIS MORTGAGE, between FORTNER ENTERPRISES, INC. a Kentucky corporation having a principal place of business in the City of Louisville, County of Jef-

ferson, and State of Kentucky, GRANTOR, and U. S. Steel Homes Credit Corporation, a Delaware corporation having a place of business in the City of New Albany, County of Floyd, and State of Indiana, GRANTEE:

WITNESSETH: Whereas GRANTOR desires to secure certain obligations to GRANTEE by mortgaging certain real estate;

NOW, THEREFORE, GRANTOR, for the purposes herein described, intending to be legally bound hereby, and in consideration of TEN and NO/100 DOLLARS ($10.00) received to its full satisfaction from GRANTEE, does hereby grant, bargain, sell, and convey to GRANTEE, its successors and assigns, the following described real estate, to-wit:

Situate in the County of Jefferson, State of Kentucky, and being more particularly described as follows, to-wit:

PARCEL 1

Lot Nos. 29 and 72 as shown and designated on the plat of Golden Meadows Section 1-A as it is recorded in Plat and Subdivision Book 15, Page 1, in the office of the Clerk of the County Court of Jefferson County, Kentucky;

PARCEL 2

Lot Nos. 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 48, 49, 50, 51, 52, 53, 54, and 55 as shown and designated on the plat of Golden Meadows Section 1-B as it is recorded in Plat and Subdivision Book 15, Page 33, in the office of the Clerk of the County Court of Jefferson County, Kentucky;

PARCEL 3

Lot Nos. 98, 99, 100, 101, 102, 103, and 104 as shown and designated on the plat of Golden Meadows Section 1-C as it is recorded in Plat and Subdivision Book 15, Page 42, in the office of the Clerk of the County Court of Jefferson County, Kentucky;

PARCEL 4

BOOK 395 PAGE 315

Lot Nos. 418, 419, and 710 as shown and designated on the plat of Golden Meadows Section 4-A as it is recorded in Plat and Subdivision Book 14, Page 81, in the office of the Clerk of the County Court of Jefferson County, Kentucky;

PARCEL 5

Beginning at a point in the South line of Constance Drive as shown on the plat of Golden Meadows Section 1-B, which plat is of record in Plat and Subdivision Book 15, Page 33 in the Jefferson County Court Clerk's Office, at a corner common to Golden Meadows Section 1-A as shown on the plat of same of record in Plat and Subdivision Book 15, Page 1 in said Clerk's Office, thence with the South line of said Constance Drive North 81°15′ East 272.23 feet, thence South 8°45′ East 130.0 feet, thence North 81°15′ East 75.0 feet to a point in the center of a ditch, thence with said ditch South 8°45′ East 234.97 feet and South 5°22′ East 455.77 feet to the Northeasterly corner of the tract conveyed to the Rt. Rev. John Floersch recorded in Deed Book 3349, Page 439; thence with the North line of said tract North 65°58′ West 681.51 feet to the Southeasterly corner of Golden Meadows, Section 1-A hereinabove mentioned, thence with the Easterly line of said Golden Meadows, Section 1-A North 20°31′ East 516.90 feet to the place of beginning;

Exhibit Mortgage, 1960

PARCEL 6

Beginning at a point in the Southerly line of the tract conveyed to Rt. Rev. John Floersch by deed of record in Deed Book 3349, Page 439, in the Jefferson County Court Clerk's Office, said point being the Northeasterly corner of Golden Meadows, Section 4-A as shown on the plat of same, which plat is of record in Plat and Subdivision Book 14, Page 81 in the aforementioned Clerk's Office, thence

with the Southerly line of the tract conveyed to the Rt. Rev. John Floersch aforementioned, South 65°58′ East 756.25 feet and South 65°00′ East 140.97 feet, South 3°40′ West 386.18 feet to a corner of and in the line of the remaining lands of E. M. Houchin, thence with several lines of said Houchins North 65°00′ West 691.08 feet, South 20°31′ West 758.26 feet and North 63°25′ West 321.80 feet to the Southeasterly corner of Golden Meadows, Section 4-A hereinabove mentioned, thence with several lines of said Golden Meadows, Section 4-A as follows, North 20°31′ East 384.74 feet, North 69°01′ West 140.0 feet, North 20°31′ East 60.0 feet, South 69°01′ East 140.00 feet and North 20°31′ East 652.94 feet to the place of beginning;

PARCEL 7

Beginning at an iron pipe at the corner common to Golden Meadows, Section 1-B, the plat of which is recorded in Plat and Subdivision Book 15, Page 33 in the Jefferson County Clerk's Office, and Golden Meadows, Section 1-C as shown by the Revised plat of same of record in Plat and Subdivision Book 15, Page 42 in said Clerk's Office, thence with several lines of said Golden Meadows, Section 1-C as follows, South 8°38′ East 673.92 feet, South 4°32′ West 175.69 feet, South 25°02′ West 350.90 feet, North 65°00′ West 283.48 feet, North 84°30′ West 105.83 feet, North 34°18′ West 97.53 feet and North 86°21′ West 130.0 feet to a point in the center of a drainage ditch; thence with the center of said drainage ditch North 3°40′ East 45.47 feet, North 5°22′ West 974.10 feet and North 8°45′ West 234.97 feet to a point in the Southerly line of Golden Meadows, Section 1-B as hereinabove mentioned, thence with several lines of said Golden Meadows, Section 1-B as follows, North 81°15′ East 444.68 feet, North 8°38′ West 130.0 feet, North 81°15′ East 60.0 feet, South 8°38′ East 100.0 feet, North 81°22′ East 135.07 feet, South 8°45′ East 29.77 feet and North 81°15′ East 314.72 feet to the place of beginning.

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TO HAVE AND TO HOLD the said premises, with all appurtenances, to GRANTEE, its successors and assigns, with covenants of General Warranty, to secure:

FIRST: Payment of a promissory note of even date herewith executed by GRANTOR in the sum of EIGHTY-EIGHT THOUSAND DOLLARS ($88,000.00), with interest at the rate of six per centum (6%) per annum computed from the date of each advance, said interest being payable on the first day of each month beginning January 1, 1961, it being expressly agreed in said note that said principal sum and interest then unpaid shall be due and payable on or before December 31, 1961, it being expressly agreed therein that the whole of said principal sum and interest then unpaid may be declared and become due and payable in the event of default as therein defined;

SECOND: Payment of a promissory note of even date herewith executed by GRANTOR in the sum of TWO HUNDRED THIRTY-ONE THOUSAND NINE HUNDRED TWENTY DOLLARS ($231,920.00), with interest at the rate of six per centum (6%) per annum computed from the date of each advance, said interest being payable on the first day of each month beginning January 1, 1961, it being expressly agreed in said note that said principal sum and interest then unpaid shall be due and payable on or before December 31, 1962, it being expressly agreed therein that the whole of said principal sum and interest then unpaid may be declared and become due and payable in the event of default as therein defined;

THIRD: Payment of a promissory note of even date herewith executed by GRANTOR in the sum of THREE HUNDRED SEVENTY-THREE THOUSAND TWO HUNDRED DOLLARS ($373,200.00), with the interest at the rate of six per centum (6%) per annum computed from the date of each advance, it being expressly agreed in said note that said principal sum together with said interest

shall be due and payable on or before December 31, 1961, it being expressly agreed therein that the whole of said principal sum then unpaid may be declared and become due and payable in the event of default as therein defined;

FOURTH: Payment of a promissory note of even date herewith executed by GRANTOR in the sum of ONE MILLION THREE HUNDRED SIXTY-TWO THOUSAND ONE HUNDRED EIGHTY DOLLARS ($1,362,180.00), with interest at the rate of six per centum (6%) per annum computed from the date of each advance, it being expressly agreed in said note that said principal sum together with said interest shall be due and payable on or before December 31, 1962, it being expressly agreed therein that the whole of said principal sum then unpaid may be declared and become due and payable in the event of default as therein defined;

FIFTH: Payment by GRANTOR to GRANTEE of all sums expended or advanced by GRANTEE pursuant to this Mortgage or the Loan Agreement entered into between the parties of even date herewith;

SIXTH: Performance of each undertaking of GRANTOR contained herein, and performance of each undertaking of GRANTOR contained in said Loan Agreement;

SEVENTH: Payment by GRANTOR to GRANTEE of all other indebtedness, direct or contingent, now or hereafter owing by GRANTOR to GRANTEE.

FOR THE CONSIDERATION AFORESAID, GRANTOR covenants and agrees that:

FIRST: GRANTOR is lawfully seized in fee simple of said premises and has good right to sell and convey the same as aforesaid; said premises are free of all encumbrances, except liens for taxes and assessments not yet due and payable and any building and use restrictions of record; and GRANTOR will warrant and defend the title to the premises forever against the claims and demands of all persons whomsoever.

SECOND: GRANTOR shall keep all buildings and other insurable property now or hereafter erected or placed in or on said mortgaged property insured against fire and other hazards, as undertaken in the aforementioned Loan Agreement.

THIRD: GRANTOR will maintain the mortgaged property free from any waste or nuisance, and will do all things necessary to maintain said property in good condition, and will pay when due all claims for labor performed and material furnished, and will not permit any lien of mechanics or materialmen to attach to the mortgaged property.

FOURTH: GRANTOR will pay, before they become delinquent, all taxes and assessments lawfully imposed upon the mortgaged property, and will promptly at the request of GRANTEE deliver to GRANTEE the receipt for such payment.

FIFTH: If GRANTOR fails to pay any taxes, assessments, liens, or insurance premiums when the same are due and payable, or otherwise defaults in the performance of any other covenant hereunder or under the said Loan Agreement, the security hereby created shall then become enforceable. GRANTEE may thereupon pay any such sums and perform any such covenants in respect of which there has been a default, and GRANTOR agrees promptly to repay any sums so advanced, without demand, with interest at the rate of six per centum (6%) per annum from the date of such advances, and such sums so advanced, with such interest, shall be secured hereby, but no such advance shall relieve GRANTOR of the consequences of any such default.

SIXTH: Should the security hereby created become enforceable as hereinabove provided, GRANTEE may declare all sums secured hereby immediately due and payable, and GRANTOR shall then pay said sums forthwith.

SEVENTH: Should the security hereby created become enforceable as hereinabove provided, GRANTEE may take possession of the mortgaged property, manage it and collect rents therefrom and apply same, less reasonable col-

lection costs, upon the indebtedness hereby secured, and all leases and rents of the mortgaged property, after the security become enforceable, are hereby assigned and mortgaged to GRANTEE as additional security for the indebtedness secured hereby.

EIGHTH: GRANTOR will not claim the benefit of any stay, extension, appraisement, or redemption law now or at any time hereafter in effect.

PROVIDED, ALWAYS, that if GRANTOR pays to GRANTEE the principal and interest on said notes, when and as the same shall become due and payable, and pays any and all other sums payable under said notes or under this Mortgage or secured by this Mortgage, this conveyance shall thereupon become null and void, and in such case GRANTEE shall execute and deliver to GRANTOR, at GRANTOR's cost, an appropriate release and discharge of this Mortgage in form to be recorded.

IN WITNESS WHEREOF, GRANTOR in pursuance of a resolution adopted by its Board of Directors on the 26th day of October, 1960 has hereunto caused its corporate name to be affixed and these presents to be subscribed by its President and Secretary this 28th day of October, 1960.

FORTNER ENTERPRISES, INC.

By /s/ A. B. Fortner
President

/s/ Edna Herberman
Secretary

STATE OF KENTUCKY
COUNTY OF JEFFERSON } SS.

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I, a Notary Public in and for the County and State aforesaid do certify that on this day the foregoing Mortgage from Fortner Enterprises, Inc., to U. S. Steel Homes

Credit Corporation was produced before me and acknowledged and delivered before me by A. B. Fortner, Jr. as President of Fortner Enterprises, Inc., a corporation, party thereto, to be the act and deed of said corporation by him as its President, thereunto duly authorized, and the seal of said corporation as affixed to said deed was attested and proven before me by Edna Herberman, as its Secretary.

Given under my hand and seal of office this 28th day of October, 1960.

/s/ Samuel Steinfeld
Notary Public, Jefferson County, Kentucky.

(Seal)

MORTGAGE NOTE

$59,000.00 Louisville, Kentucky
August 2, 1961

On or before December 31, 1962, for value received, the undersigned promises to pay to the order of U. S. STEEL HOMES CREDIT CORPORATION, a Delaware corporation, at its office in the City of New Albany, Indiana, or at such other place as the holder hereof may designate from time to time, in lawful money of the United States of America, the principal sum of FIFTY-NINE THOUSAND DOLLARS ($59,000.00), with interest at the rate of six per centum (6%) per annum, computed from the date of each advance, said interest being payable on the first day of each month beginning September 1, 1961.

In certain events defined in the Mortgage hereinafter mentioned and in certain events defined in that certain Loan Agreement of even date herewith between the undersigned and U. S. Steel Homes Credit Corporation, the principal of and interest on this Note may be declared and become due and payable before the stated maturity hereof by any legal holder hereof, in the manner and with the effect set forth in said Mortgage, whereupon the under-

signed agrees to make payment of this Note accordingly.

In the event that any advances on account of the principal of this Note shall be made by payee subsequent to the occurrence of an event of default as detailed in the said Mortgage or the said Loan Agreement, the making of such advances shall not be construed as a waiver of any such default, shall not in any manner alter, modify or amend any of the terms or provisions hereof and shall not affect or modify the obligation of the undersigned to make payment of the principal of and interest on this Note in accordance with its terms.

The maker and endorsers and all parties to this instrument severally waive presentment for payment, protest, notice of non-payment of this instrument, demand, and all legal diligence in enforcing collection.

This Note is secured by a Mortgage of even date herewith from the undersigned to U. S. Steel Homes Credit Corporation, secured by real estate situated in the County of Jefferson and State of Kentucky, to which Mortgage reference is made for a description of the security and rights of the holder of this Note in respect thereof.

FORTNER ENTERPRISES, INC.

By /s/ A. B. Fortner
President

ATTEST:

/s/ Edna Herberman
Secretary

Land Note, 1961

MORTGAGE NOTE

$2,950.00 Louisville, Kentucky
August 2, 1961

On or before December 31, 1962, for value received, the undersigned promises to pay to the order of U. S. STEEL

HOMES CREDIT CORPORATION, a Delaware corporation, at its office in the City of New Albany, Indiana, or at such other place as the holder hereof may designate from time to time, in lawful money of the United States of America, the principal sum of TWO THOUSAND NINE HUNDRED FIFTY DOLLARS ($2,950.00), without interest. After maturity, interest shall be paid monthly on the first day of each month at the rate of six per centum (6%) per annum on all amounts which shall have been disbursed hereon and remain unpaid.

In certain events defined in the Mortgage hereinafter mentioned and in certain events defined in that certain Loan Agreement of even date herewith between the undersigned and U. S. Steel Homes Credit Corporation, the principal of and interest on this Note may be declared and become due and payable before the stated maturity hereof by any legal holder hereof, in the manner and with the effect set forth in said Mortgage, whereupon the undersigned agrees to make payment of this Note accordingly.

In the event that any advances on account of the principal of this Note shall be made by payee subsequent to the occurrence of an event of default as detailed in the said Mortgage or the said Loan Agreement, the making of such advances shall not be construed as a waiver of any such default, shall not in any manner alter, modify or amend any of the terms or provisions hereof and shall not affect or modify the obligation of the undersigned to make payment of the principal of and interest on this Note in accordance with its terms.

The maker and endorsers and all parties to this instrument severally waive presentment for payment, protest, notice of non-payment of this instrument, demand, and all legal diligence in enforcing collection.

This Note is secured by a Mortgage of even date herewith from the undersigned to U. S. Steel Homes Credit Corporation, secured by real estate situated in the County

of Jefferson and State of Kentucky, to which Mortgage reference is made for a description of the security and rights of the holder of this Note in respect thereof.

FORTNER ENTERPRISES, INC.

By /s/ A. B. Fortner
President

ATTEST:

/s/ Edna Herberman
Secretary

Collateral Note, 1961

INTERROGATORIES PURSUANT TO RULE 33 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

1. With respect to the allegations found in Paragraph 3 of the complaint:

(a) Give the date plaintiff's Certificate of Incorporation was issued by the Secretary of State of Kentucky and the date a copy of its Articles of Incorporation were filed in the office of the Jefferson County Court Clerk, Kentucky, giving the recorded location of such.

(b) Furnish herewith a copy of plaintiff's Articles of Incorporation and all amendments thereto.

(c) Give a chronological account of plaintiff's stockholders, their addresses, their equities in the corporation, the class of stock owned, and the method of acquisition of such stock, i.e., original issue from the company or transfer. If original issue whether such was issued for money or services. If money, the amount, and if service, the nature of such. If a transfer, the name and address of the person from whom the stock was transferred. The scope of this inquiry concerning plaintiff's stockholders is from plaintiff's incorporation down to the present time.

(d) Give the names and addresses of the persons who have in their possession:

i. Plaintiff's minute books including By-Laws,

ii. Plaintiff's stock records, and

iii. Plaintiff's financial records.

(e) Give the name, address and title of plaintiff's corporate officers.

(f) Give the name and address of plaintiff's directors.

2. With respect to the allegations found in Paragraph 13 of the complaint:

(a) Give the source of your information and all supporting facts relied upon in alleging that United Steel Corporation's prefabricated homes were purchased "at artifically high prices."

(b) What is meant by the term "artifically?"

3. With regard to the allegations found in Paragraph 15 of the complaint:

(a) List by lot number and street number the 70 houses allegedly constructed of faulty and defective material and give the date of purchase by plaintiff of material from United States Steel Corporation for each home and the date of delivery of such material to plaintiff for each home.

(b) Give the names and addresses (if such address is different from the street address listed above) of the purchasers of the 70 homes. If plaintiff is still the owner of any such homes, so state.

(c) List separately under each of the 70 homes, in specific detail, the items in each home furnished by United States Steel Corporation alleged to be faulty and defective.

(d) With reference to Interrogatory 3 (c) above, state whether or not a claim for replacement of faulty and defective material was made to United States Steel

Corporation, giving the date such claim was made, the manner of its making, i.e., verbal or written, if verbal the name of the representative of United States Steel Corporation to whom such claim was made, the component parts claimed to be defective and identify the particular home to which such allegedly faulty and defective materials were furnished.

(e) If claim was made against the United States Steel Corporation as outlined in Interrogatory 3 (d) above, give the results of each such claim, i.e., whether or not the claim was honored by United States Steel Corporation in whole or in part and if in part, to what extent, or if denied, the name of the representative of United States Steel Corporation denying such claim and the reasons given by United States Steel Corporation for denying such claim.

(f) Have any of the purchasers of the 70 homes made a verbal claim to plaintiff based on faulty and and defective materials in the home? If so, give their names and addresses, the approximate date such claim was made, and the substance of each such claim.

(g) Have any of the purchasers of the 70 homes made written claim to plaintiff for allegedly faulty and defective materials in the homes? If so, furnish with your answer a copy of each such written claim or complaint; and

(h) Have any of the purchasers of the 70 homes made either verbal or written complaint or claim to plaintiff concerning workmanship or construction as distinguished from faulty or defective materials? If so, as to verbal complaints concerning workmanship or construction, give the name and address of each person making such complaint, the approximate date made and the substance of such; as to written complaints concerning workmanship or construction furnish a copy of each such complaint with your answer to this interrogatory.

Interrogatories Pursuant to Rule 33, Etc.

4. With respect to the allegations found in Paragraph 17 of the complaint:

(a) State the basis for the allegation that the purchase of the homes was "at unreasonably high prices" giving specific facts and if available, written data indicating that such prices were unreasonable.

(b) Give the additional sum spent on each house making specific itemized reference to the house and item(s) for which each such expenditure was made and the amount of expenditure allocated to each item.

(c) Give the period of delay of completion separately as to each home and the name and address of the witness (or witnesses) plaintiff intends to use to prove these allegations concerning delay in completion.

(d) Give the date construction was commenced, and the date construction was completed as to each of the 70 homes.

(e) Give the accounting basis on which the allegation is made that the loss of profit will be $900.00 on each home.

(f) Is the real estate development about which this controversy centers the first such development undertaken by plaintiff? If not, give the name, location, and time of commencement of other similar developments.

(g) State the basis for the allegation that plaintiff is unable to purchase prefabricated steel homes from other manufacturers thereof for erection on properties other than those encumbered with obligation to the defendant U. S. Steel Homes Credit Corporation. List the names and addresses of such other manufacturers available to plaintiff and indicate with which of other such manufacturers plaintiff has negotiated, giving the name and address of the person representing such other manufacturers with whom plaintiff has conducted such negotiations, and

Interrogatories Pursuant to Rule 33, Etc.

(h) Give the names of such other manufacturers mentioned in Interrogatory 4 (g) above that offer financial services in connection therewith, similar to the financial service afforded plaintiff by U. S. Steel Homes Credit Corporation in connection with the transaction here in controversy.

5. If the person making answer to the above interrogatories makes such answer not on information known to him personally but on information acquired from others, give the name and address of the person from whom he acquired such information and indicate the specific interrogatory to which the information thus acquired pertains.

Albert F. Reutlinger

AMENDED COUNTER-CLAIM.

U. S. Steel Homes Credit Corporation for amendment to its counter-claim against the plaintiff states:

1. Heretofore on or about October 28, 1960, plaintiff executed and delivered to U. S. Steel Homes Credit Corporation its three promissory notes, each dated October 28, 1960 and further described below:

(a) One note mentioned above is in the face amount of $231,920 and bears interest at the rate of 6% per annum on the unpaid balance thereof. After certain advances by U. S. Steel Homes Credit Corporation and partial repayment by the plaintiff, there is presently outstanding on this note an unpaid balance of $165,557.60. As of September 21, 1962, this note has accrued interest charges of $4,592.06 and thereafter the daily accrual of interest is $27.59. A photostatic copy of said note was filed with the original counter-claim as a part thereof marked for reference "Land Note Number 2, 1960."

(b) The second note mentioned above is in the face amount of $373,200 and bears interest at the rate of

6% per annum on the unpaid balance therof. After certain advances by U. S. Steel Homes Credit Corporation and partial repayment by the plaintiff, there is presently outstanding on this note an unpaid balance of $25,402.50. As of September 21, 1962, this note had accrued interest charges of $1,107.15 and thereafter the daily accrual of interest is $4.23. A photostatic copy of said note was filed with the original counter-claim as a part thereof marked for reference "Construction Note Number 1, 1960."

(c) The third note mentioned above is in the face amount of $1,362,180 and bears interest at the rate of 6% per annum on the unpaid balance thereof. After certain advances by U. S. Steel Homes Credit Corporation and partial repayment by the plaintiff, there is presently outstanding on this note an unpaid balance of $41,539.50. As of September 21, 1962, this note had accrued interest charges of $1,601.03 and thereafter the daily accrual of interest is $6.92. A photostatic copy of said note was filed with the original counter-claim as a part thereof marked for reference "Construction Note Number 2, 1960."

2. Repeats the allegations made in Paragraph 2 of the original counter-claim.

3. Repeats the allegations made in Paragraph 3 of the original counter-claim, except that it now deletes any reference therein to Lot 72, Golden Meadows Subdivision, Section 1-A, a part of Parcel 1 and Lot 205, Section 1-D, Golden Meadows Subdivision, a part of Parcel 6.

4. Repeats the allegations made in Paragraph 4 of the original counter-claim.

5. In accordance with the terms of the notes and mortgage mentioned in Paragraphs 1 and 2 above, plaintiff is now indebted to U. S. Steel Homes Credit Corporation by way of principal the aggregate sum of $232,499.60, together with appropriate interest thereon. Some of this

principal and interest according to the terms of said notes and mortgage is now immediately due and payable. Despite request therefor, such has not been paid. In accordance with the precipitation clause in said notes and mortgage, U. S. Steel Homes Credit Corporation now elects to declare plaintiff's entire indebtedness in the aggregate sum of $232,499.60 immediately due and payable, together with accrued interest in the aggregate amount of $7,300.24 to September 21, 1962 with daily accrual of interest thereafter in the amount of $38.74 until paid.

6. Withdraws the allegations of Paragraph 6 of the original counter-claim.

7. Heretofore on or about August 2, 1961, plaintiff executed and delivered to U. S. Steel Homes Credit Corporation its two promissory notes, each dated August 2, 1961 and further described below:

(a) One note mentioned above is in the face amount of $59,000 and bears interest at the rate of 6% per annum on the unpaid balance thereof. After certain advances by U. S. Steel Homes Credit Corporation and partial repayment by the plaintiff, there is presently outstanding on this note an unpaid balance of $50,200. As of September 21, 1962, this note had accrued interest charges of $1,298.34 and thereafter the daily accrual of interest is $8.37. A photostatic copy of said note was filed with the original counter-claim as a part thereof marked for reference "Land Note, 1961."

(b) The other note mentioned above is in the face amount of $2,950 and bears no interest until maturity. A photostatic copy of said note is filed herewith as a part hereof marked for reference "Collateral Note, 1961."

8. Repeats the allegations made in Paragraphs 8 of the original counter-claim.

9. Repeats the allegations made in Paragraph 9 of the original counter-claim, except that it now deletes any reference therein to Parcel 1.

Amended Counter-Claim

10. Repeats the allegations made in Paragraph 10 of the original counter-claim.

11. In accordance with the terms of the notes and mortgage mentioned in Paragraphs 7 and 8 above, plaintiff is now indebted to U. S. Steel Homes Credit Corporation by way of principal the aggregate sum of $53,150, together with appropriate interest thereon. Some of this interest according to the terms of said notes and mortgages was due and payable on or before July 12, 1962. Despite requests therefor, such has not been paid. In accordance with the precipitation clause in said notes and mortgage U. S. Steel Homes Credit Corporation elected, on July 12, 1962, to declare plaintiff's entire indebtedness now in the aggregate sum of $53,150 immediately due and payable, together with accrued interest in the amount of $1,334.21 to September 21, 1962 with daily accrual of interest thereafter in the amount of $8.86 until paid.

12. Withdraws the allegations of Paragraph 12 of the original counter-claim.

WHEREFORE, the defendants, and each of them, pray the complaint against them be dismissed. The defendant, U. S. Steel Homes Credit Corporation, prays for judgment against the plaintiff in the amount of $294,284.05, representing principal in the amount of $285,649.60 and accrued interest in the amount of $8,634.45 and for a judgment of daily accrual of interest in the amount of $47.60 from and after September 21, 1962 until paid, that it have a lien prior and superior to all other liens on said real property presently encumbered by the two mortgages mentioned in the Counter-Claim, that the liens of U. S. Steel Homes Credit Corporation be enforced and the said real property to which those respective liens attach be sold by order of this court free and clear of all liens and claims, except easements and restrictions of record, and taxes not yet due and payable and the proceeds thereof be applied toward payment of the U. S. Stel Homes Credit Corpora-

tions' judgment against plaintiff. The defendants, and each of them, further pray for their costs herein expended and for all other relief to which they may appear to be entitled.

Albert F. Reutlinger

INTERROGATORIES PURSUANT TO RULE 33 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

Defendant, U. S. Steel Homes Credit Corporation, is required to answer the following Interrogatories in accordance with Rule 33 of the Federal Rules of Civil Procedure:

1. What date was U. S. Steel Homes Credit Corporation incorporated?

2. For each of the years 1960, 1961 and 1962 identify each officer and director of U. S. Steel Homes Credit Corporation by giving their names, title and office addresses.

3. State whether or not U. S. Steel Homes Credit Corporation has in its possession any statistics concerning the sale or manufacture of prefabricated homes or their component parts by any seller or manufacturer in the United States as a whole or any portion or portions thereof for the years 1957 through 1962. If so:

a. Identify each such set of statistics by giving the date, title, number of pages, person or organization which prepared or under whose auspices the statistics were prepared and the location of each such set of statistics.

b. Identify for each set of statistics the person or persons who have charge of or control over such statistics by giving their names, positions and business addresses.

4. For each of the years 1957 through 1962 did U. S. Steel Homes Credit Corporation submit statistics to the

United States Government or any of its various departments, agencies or bureaus or to the United States Congress or any of its committees or sub-committees which concerned the loans made by it for the purpose of financing the development of real estate and/or the sale or purchase of prefabricated homes or component parts for prefabricated houses? If so:

a. Identify each such report including therein the date of the report, the governmental body to whom it was submitted, the title of the report and the period of time covered by each such report.

b. As to each such report, state whether or not a copy was retained by U. S. Steel Homes Credit Corporation.

c. If such reports were retained, identify their location and the person or persons having control of or charge of such documents by giving their names, business addresses and positions.

5. Separately for each of the years 1960 through 1962 give the following:

a. Each state in which U. S. Steel Homes Credit Corporation loaned money for the purpose of financing the development of real estate of the purchase or sale of United States Steel Homes or component parts for prefabricated homes. For each state give the total dollar volume of loans so made.

b. For each such state give the name and address of every person or company to whom loans were made which in the aggregate exceeded $100,000.00.

6. Separately for each of the years 1960 through 1962 give the following:

a. The name and address of each person or company doing business in Jefferson County, Kentucky to whom loans were made by U. S. Steel Homes Credit Corporation for the purpose of the development of real estate

for the purchase or sale of United States Steel Homes or component parts for prefabricated houses.

b. For each of the persons or companies named in Interrogatory 6a above, state the amount of the aggregate of the loans outstanding for each of the years 1960 through 1962.

7. Identify, by giving the following information as to each, all letters, memoranda, or other documents or copies thereof whether sent or received now in the files of U. S. Steel Homes Credit Corporation which mention or are concerned with the plaintiff, Fortner Enterprises, Inc.:

a. Date.

b. Author.

c. Person or persons to whom addressed.

d. The place where located.

e. The person who has charge of such documents, his business address and position.

f. Whether a letter, memorandum or other type document.

8. Identify, by giving the following information as to each, all letters, memoranda, or other documents, or copies thereof, whether sent or received, now in the files of U. S. Steel Homes Credit Corporation which concern themselves with sales of prefabricated homes or component parts thereof as a condition of or prerequisite to the giving of financing by U. S. Steel Homes Credit Corporation:

a. Date.

b. Author.

c. Person or persons to whom addressed.

d. The place where located.

e. The person who has charge of or control over such document, his business address and position.

f. Whether a letter, memorandum or other type document.

Interrogatories Pursuant to Rule 33, Etc.

9. Identify all persons who have solicited or handled the granting of financing of real estate, prefabricated homes or component parts thereof in the Jefferson County, Kentucky area in each of the years 1960, 1961 and 1962 by giving their names, business addresses and positions with U. S. Steel Homes Credit Corporation.

10. Were the persons or any of them identified in response to Interrogatory No. 9 furnished with Manuals, bulletins, letters, memoranda or other documents concerning the methods to be employed by them in offering the financing services of U. S. Steel Homes Credit Corporation.

a. If so, identify each such Manual, bulletin, letter, memorandum or other document by giving its title, author, date, person or persons to whom addressed, and the name, business address and position with company of the person who has each such document in his custody, control or possession.

b. If not, state whether oral directions were given the persons who solicited or handled the offering of the financing services of U. S. Steel Homes Credit Corporation as to the methods to be employed by them in offering such services? Identify the person or persons who gave such oral directions by giving their names, business addresses and positions with the company.

11. Identify each officer or employee of U. S. Steel Homs Credit Corporation who has had any direct dealings with Fortner Enterprises, Inc. concerning United States Steel Homes or component parts for prefabricated houses by giving their names, business addresses and positions with the company.

12. Identify every officer or employee of U. S. Steel Homes Credit Corporation who has passed upon or made decisions concerning dealings with Fortner Enterprises, Inc., to the extent said officers and employees are not identified in response to Interrogatory No. 11, by giving

their names, business addresses and positions with the company.

13. Does U. S. Steel Homes Credit Corporation have possession of any 1960, 1961 and/or 1962 price list for prefabricated houses or for component parts for prefabricated houses issued or published by or on behalf of any of its competitors? If so, identify each by giving:

a. The name of the competitor.

b. The date each price list was issued, released, or otherwise appearing thereon.

c. The name of the person having charge of or control over such price list, his business address and position with the company.

14. Has U. S. Steel Homes Credit Corporation or its authorized agents or assigns in 1960, 1961 or 1962 foreclosed upon or instituted foreclosure proceedings against any person or company which has borrowed funds from U. S. Steel Homes Credit Corporation? If so, state:

a. The name and address of the person or company foreclosed upon or against whom foreclosure proceedings have been instituted.

b. The circumstances under which such foreclosure or proceedings therefor were necessitated.

15. State the name, business address and position with company of the person who has charge of or control of the minute books of U. S. Steel Homes Credit Corporation.

16. State whether or not any loans have been made by U. S. Steel Homes Credit Corporation for any purpose other than the financing of the development of real estate for subdivision purposes or for the purpose of financing the purchase by others of United States Steel Homes or component parts for prefabricated houses. If the answer to the foregoing Interrogatory is in the affirmative, state:

a. The name and address of each person or company to whom such other loans were made.

b. The amount of each loan.

c. The date of each loan.

d. The purpose of each loan.

e. The terms and conditions under which each such loan was made.

17. State whether or not any loans have been made by U. S. Steel Homes Credit Corporation which did not have as a condition precedent to such loan the requirement that United States Steel Homes or component parts for prefabricated houses manufactured by United States Steel Corporation be purchased by the borrower in developing real estate for subdivision purposes. If the answer to the foregoing Interrogatory is in the affrimative, state:

a. The name and address of each person or company to whom such loans were made.

b. The amount of each loan.

c. The date of each loan.

d. The terms and conditions under which each loan was made.

Kenneth L. Anderson

INTERROGATORIES PURSUANT TO RULE 33 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

Defendant, United States Steel Corporation, is required to answer the following Interrogatories in accordance with Rule 33 of the Federal Rules of Civil Procedure:

1. For each of the years 1960, 1961 and 1962 identify the Division or divisions of United States Steel Corporation which has or have as its or their function the manufacture, purchase and/or sale of component parts for prefabricated houses.

Interrogatories Pursuant to Rule 33, Etc.

2. For each of the years 1960, 1961 and 1962, identify each officer and director of United States Steel Corporation by giving their names, titles and office addresses.

3. Identify each division and subsidiary of United States Steel Corporation.

4. For each of the years 1960, 1961 and 1962, identify the officers in charge of each division of United States Steel Corporation by giving their names, titles and addresses.

5. For each of the years 1960, 1961 and 1962, identify the officers and directors of each subsidiary of United States Steel Corporation by giving their names, titles, and addresses.

6. Identify the division or divisions or subsidiary or subsidaries of United States Steel Corporation which has or have in its or their possession any statistics concerning the sale or manufacture of prefabricated homes or their component parts by any seller or manufacturer in the United States as a whole or any portion or portions thereof for the years 1957 through 1962.

a. Identify each such set of statistics by giving the date, title, number of pages, person or organization which prepared or under whose auspices the statistics were prepared and the location of each such set of statistics.

b. Identify for each such division or subsidiary and for each set of statistics the person or persons who have charge of or control over such statistics by giving their names, positions and business addresses.

7. For each of the years 1957 through 1962 did United States Steel Corporation or any of its divisions submit statistics to the United States Government or any of its various departments, agencies or bureaus or to the United States Congress or any of its committees or subcommittees which concerned its sales or manufacture of component

parts for prefabricated homes or of prefabricated homes by dollar value or unit? If so:

a. Identify each such report, including therein the date of the report, the governmental body to whom it was submitted, the title of the report, the type of statistics included herein, and the period of time covered.

b. As to each such report, state whether or not a copy was retained by United States Steel Corporation or the division or divisions of United States Steel Corporation which prepared such report.

c. If such reports were retained, identify their location and the person or persons having control of or charge of such documents by giving their names, business addresses and positions.

8. Separately for each of the years 1957 through 1962 give the following:

a. Each State in which United States Steel Corporation or any of its divisions sold component parts for prefabricated homes or prefabricated homes.

b. For each such State give the dollar volume of sales of component parts for prefabricated homes and prefabricated homes.

c. For each such State give the number of "packages" of component parts for prefabricated homes sold.

9. Separately for each of the years 1957 through 1962 give the following:

a. The number of "packages" of component parts for prefabricated houses and prefabricated houses sold in Jefferson County, Kentucky.

b. The dollar volume of sales of prefabricated houses and component parts for prefabricated houses sold in Jefferson County, Kentucky.

c. The name and address of each individual or organization to whom prefabricated houses or component

parts for prefabricated houses were sold in Jefferson County, Kentucky.

(1) Give the number of "packages" of component parts for prefabricated houses, and prefabricated houses, sold to each such person or organization.

(2) Give the dollar volume of sales of prefabricated houses or component parts for prefabricated houses sold to each such person or organization.

10. Identify, by giving the following information as to each, all letters, memoranda, or other documents or copies thereof whether sent or received now in the files of United States Steel Corporation and/or its divisions which mention or are concerned with the plaintiff, Fortner Enterprises, Inc.:

a. Date.

b. Author.

c. Person or persons to whom addressed.

d. The place where located.

e. The person who has charge of such documents, his business address and position.

f. Whether a letter, memorandum, or other type document.

11. Identify, by giving the following information as to each, all letters, memoranda, or other documents, or copies thereof, whether sent or received, now in the files of United States Steel Corporation and/or its divisions which concern themselves with sales of prefabricated homes or component parts thereof as a condition of or prerequisite to the giving of financing by U. S. Steel Homes Credit Corporation:

a. Date.

b. Author.

c. Person or persons to whom addressed.

d. The place where located.

e. The person who has charge of or control of such documents, his business address and position.

f. Whether, a letter, memorandum or other type document.

12. For the years 1960, 1961 and 1962 identify each different prefabricated house or "package" of component parts for a prefabricated house sold by United States Steel Corporation and/or its divisions by giving its model number or other appropriate means of identification.

a. As to each such model, state whether or not plans, specifications and a list of the components which make up each such model are available. If so, give the name, business address and position of the person or persons in charge of such documents.

b. As to each such model, give the selling price of the United States Steel Corporation, or its division which sells same.

c. As to each such model, give separately the cost allocated on the books of United States Steel Corporation or its appropriate division or divisions for manufacture, sales, advertising, overhead and total cost.

13. Did United States Steel Corporation and/or its divisions in each of the years 1960, 1961 and 1962 purchase certain of the components used in its "packages" of component parts for prefabricated houses from other manufacturers or sellers? If so, give for each year:

a. The various component parts so purchased.

b. The models in which each was used.

c. The manufacturer from whom each was purchased.

14. Name the person in charge of the New Albany plant of the United States Steel Homes Division, United States Steel Corporation.

15. Identify all persons who solicited or handled sales of United States Steel Homes or component parts for pre-

fabricated houses in the Jefferson County, Kentucky area in 1960, 1961 and 1962 by giving their names, business addresses and positions with United States Steel Corporation or its divisions.

16. Were the persons or any of them identified in response to Interrogatory 15 furnished with Sales Manuals, bulletins, letters, memoranda or other documents concerning the methods to be employed by them in selling United States Steel Homes or component parts for prefabricated houses?

a. If so, identify each such Sales Manual, bulletin, letter, memorandum or other document by giving its title, author, date, persons to whom addressed, and the name, business address and position with the company of the person who has had such document in his custody, control or possession.

b. If not, state whether any oral directions were given the persons who solicited or handled sales of United States Steel Homes or component parts for prefabricated houses as to the methods to be employed by them in selling such homes or component parts? Identify the person or persons who gave such oral directions by giving their names, business addresses and positions with the company.

17. For each of the years 1960, 1961 and 1962 identify each purchaser except Fortner Enterprises, Inc. of United States Steel Homes or component parts for prefabricated houses which has complained to United States Steel Corporation or any of its divisions about the quality of the said United States Steel Homes or any of the said component parts for prefabricated houses by giving said complainant's name and address, or if a company, the company name and address.

a. If any of the said complaints were in writing, identify each such written complaint by giving the name of the company or person making the complaint, the author of the written complaint, the date of said writing,

and the person having control over or custody of said writing.

b. If any of the said complaints were oral, identify each person or company making an oral complaint, the employee of United States Steel Corporation or its divisions to whom said con plaint was made, the approximate date of each such complaint, and the subject matter of each such complaint.

18. Identify each officer or employee of United States Steel Corporation or its divisions who has had any direct dealings with Fortner Enterprises, Inc. concerning United States Steel Homes or component parts for prefabricated houses by giving their names, business addresses and positions with the company.

19. Identify every officer or employee of United States Steel Corporation or its divisions who has passed upon or made decisions concerning dealings with Fortner Enterprises, Inc., to the extent said officers and employees are not identified in response to Interrogatory 18, by giving their names, business addresses, and positions with the company.

20. Does United States Steel Corporation or its divisions have possession of 1960, 1961 and/or 1962 price lists for prefabricated houses or for component parts for prefabricated houses issued or published by or on behalf of any of its competitors? If so, identify each by giving:

a. The name of the competitor.

b. The date issued, released, or otherwise appearing thereon.

c. The name of the person having charge of or control over each such price list, his business address and position with the company.

21. State the name, business address and position with the company of the person who has charge of or control of the minute books of United States Steel Corporation.

Kenneth L. Anderson

REPLY TO AMENDED COUNTERCLAIM OF U. S. STEEL HOMES CREDIT CORPORATION.

Plaintiff, Fortner Enterprises, Inc., for its reply to the amended counterclaim of the defendant, U. S. Steel Homes Credit Corporation, states:

1. Plaintiff admits the execution and delivery of the three notes which are the subject of Paragraph 1 of the amended counterclaim and denies each and every other allegation in Paragraph 1 of the amended counterclaim.

2. Plaintiff admits the allegations of Paragraphs 2 and 3 of the amended counterclaim.

3. Plaintiff states that it has insufficient information to form a belief as to paragraph 4 of the amended complaint and therefore denies same.

4. Plaintiff denies the allegations of Paragraph 5 of the amended counterclaim.

5. Plaintiff admits the execution and delivery of the two notes which are the subject of Paragraph 7 of the amended counterclaim and denies each and every other allegation in Paragraph 7 of the amended counterclaim.

6. Plaintiff admits the allegations of Paragraphs 8 and 9 of the amended counterclaim.

7. Plaintiff states that it has insufficient information to form a belief as to Paragraph 10 of the Amended complaint and therefore denies same.

8. Plaintiff denies the allegations of Paragraph 11 of the amended counterclaim.

9. Plaintiff admits the execution and delivery of the various notes and mortgages as described in the defendant's counterclaim, but states that the plaintiff's failure to pay said notes which are allegedly due as of the date of its Complaint and its present inability to pay the said notes now allegedly due and owing is directly attributable to and is the direct result of the illegal conduct of the defendants,

United States Steel Corporation and U. S. Steel Homes Credit Corporation.

10. Plaintiff states that the defendants have refused to allow the plaintiff to purchase and/or build other homes than United States Steel Homes in its subdivision and as a direct result of said illegal conduct and the illegal conduct as set forth in plaintiff's Complaint filed herein, the plaintiff has been prohibited and rendered unable to perform and to pay the notes as set forth in defendant's counterclaim.

11. Plaintiff, on the grounds set forth above, denies that there is presently due and owing any sums to the defendant, U. S. Steel Homes Credit Corporation, and denies each and every other allegation of the defendant's counterclaim.

WHEREFORE, having fully answered, plaintiff demands:

1. Judgment as prayed for in its original Complaint;

2. That the counterclaim of U. S. Steel Homes Credit Corporation be dismissed;

3. Its costs herein expended;

4. All other proper relief to which it may appear entitled.

Kenneth L. Anderson
A. Scott Hamilton

MOTION TO STRIKE.

Comes the defendant U. S. Steel Homes Credit Corporation and pursuant to Rule 12 (f) moves the court strike Paragraphs 9, 10 and 11 of plaintiff's reply to the amended counterclaim on the grounds that such paragraphs are an insufficient defense and are immaterial to the issues presented in the amended counterclaim and are not a proper reply thereto.

Albert F. Reutlinger

REQUEST FOR ADMISSIONS.

Defendant U. S. Steel Homes Credit Corporation calls upon plaintiff to admit the truth of the following matters set forth below, all of which treat with that defendant's counterclaim as amended.

1. Exhibit "Land Note Number 2, 1960" is a true and accurate reproduction of the original note executed by plaintiff.

2. With references to "Land Note Number 2, 1960" and pursuant thereto, on the dates and in the amounts as set forth below, defendant U. S. Steel Homes Credit Corporation advanced various sums of money to the plaintiff.

Date	Funds Advanced
October 28, 1960	$107,175.—
June 22, 1961	26,543.—
September 20, 1961	67,299.60

3. With reference to "Land Note Number 2, 1960," on the dates and in the amounts set forth below the plaintiff repaid the defendant U. S. Steel Homes Credit Corporation as principal various sums of money.

Date	Principal Repaid
April 23, 1962	$ 260.—
May 21, 1962	2,200.—
May 28, 1962	2,200.—
May 31, 1962	2,200.—
May 31, 1962	2,200.—
June 14, 1962	2,200.—
June 27, 1962	2,200.—
July 2, 1962	2,200.—
July 10, 1962	2,200.—
July 16, 1962	2,200.—
July 31, 1962	2,200.—
August 7, 1962	2,200.—
August 14, 1962	2,200.—

Date	Principal Repaid
August 30, 1962	2,200.—
August 30, 1962	2,200.—
September 14, 1962	2,200.—
September 21, 1962	2,200.—

4. Exhibit "Construction Note Number 1, 1960" is a true and accurate reproduction of the original note executed by plaintiff.

5. With reference to "Construction Note Number 1, 1960" and pursuant thereto, on the dates and in the amounts as set forth below, defendant U. S. Steel Homes Credit Corporation advanced various sums of money to the plaintiff.

Date	Funds Advanced
December 12, 1960	$3,300.46
December 12, 1960	4,000.—
December 14, 1960	3,870.72
December 14, 1960	1,000.—
December 19, 1960	$4,962.88
December 19, 1960	1,000.—
January 3, 1961	1,000.—
January 6, 1961	4,704.62
January 9, 1961	1,000.—
January 13, 1961	3,151.13
January 13, 1961	1,000.—
January 23, 1961	2,262.12
January 23, 1961	3,699.85
February 6, 1961	2,308.87
March 2, 1961	3,000.—
March 10, 1961	6,859.14
March 10, 1961	2,000.00
March 15, 1961	2,601.00
March 20, 1961	4,560.22
March 20, 1961	2,351.50
April 4, 1961	1,000.—
April 10, 1961	3,652.39

Request for Admissions

Date	Funds Advanced
April 10, 1961	6,205.66
April 20, 1961	3,959.78
April 24, 1961	3,000.00
May 3, 1961	3,646.35
May 3, 1961	1,000.00
May 8, 1961	3,892.11
May 10, 1961	6,355.53
May 10, 1961	2,000.00
May 26, 1961	2,961.15
May 29, 1961	1,126.00
June 1, 1961	3,000.—
June 5, 1961	2,041.20
June 5, 1961	3,813.50
June 7, 1961	1,000.—
June 12, 1961	3,292.92
June 12, 1961	1,000.—
June 14, 1961	2,507.50
June 21, 1961	3,034.10
June 21, 1961	6,461.91
June 26, 1961	3,000.—
July 10, 1961	6,416.67
July 10, 1961	8,576.08
July 13, 1961	6,426.82
July 13, 1961	2,000.—
July 27, 1961	4,000.—
August 1, 1961	1,147.50
August 3, 1961	1,020.—
August 7, 1961	3,102.88
August 7, 1961	2,000.—
August 9, 1961	3,094.64
August 9, 1961	3,745.36
August 14, 1961	11,353.28
August 14, 1961	7,210.90
August 28, 1961	9,405.66
August 28, 1961	4,000.—
September 5, 1961	6,873.10

Date	Funds Advanced
September 5, 1961	4,000.00
September 7, 1961	19,334.72
October 3, 1961	3,483.20
October 3, 1961	3,000.—
October 12, 1961	10,785.11
October 12, 1961	10,519.99
November 1, 1961	12,505.86
November 1, 1961	9,000.—
November 13, 1961	12,333.24
November 14, 1961	6,281.50
November 14, 1961	8,000.—
December 1, 1961	14,242.30
December 1, 1961	7,000.—
December 11, 1961	6,369.59
December 11, 1961	2,000.—
December 15, 1961	3,058.65
December 15, 1961	1,000.—
January 26, 1962	3,473.58
January 26, 1962	11,226.17
March 6, 1962	4,770.27
May 10, 1962	3,672.36

6. With reference to "Construction Note Number 1, 1960," on the dates and in the amounts set forth below the plaintiff repaid (or caused to be credited to) the defendant U. S. Steel Homes Credit Corporation as principal various sums of money.

Date	Principal Repaid (or Credited)
June 7, 1961	$5,316.94
June 19, 1961	9,540.—
June 19, 1961	9,755.—
July 5, 1961	$ 8,692.—
July 31, 1961	7,266.50
August 15, 1961	7,840.—
August 22, 1961	9,245.00
August 23, 1961	5,103.01

Date	Principal Repaid (or Credited)
August 23, 1961	6,300.46
August 25, 1961	8,416.—
September 11, 1961	5,323.81
September 20, 1961	8,061.00
September 20, 1961	8,395.00
September 22, 1961	10,214.00
September 29, 1961	7,460.00
October 9, 1961	5,703.09
October 9, 1961	7,460.00
October 9, 1961	7,460.00
October 10, 1961	7,077.50
October 16, 1961	8,337.50
October 20, 1961	10,605.—
November 16, 1961	8,184.50
November 21, 1961	8,031.50
November 27, 1961	1,000.00
December 4, 1961	6,695.00
December 14, 1961	64,694.85*

(*This figure, together with accrued interest of $2,391.-36, on this date, was credited on Construction Note Number 1, 1960 and became an obligation under Construction Note Number 2, 1960, on the same date.)

December 18, 1961	5,057.78
December 26, 1961	4,995.91
December 29, 1961	8,225.00
January 2, 1962	11,880.00
January 8, 1962	6,695.00
January 29, 1962	5,092.69
January 29, 1962	7,001.00
April 2, 1962	7,842.50
April 2, 1962	6,867.—
April 5, 1962	7,460.—
April 23, 1962	7,020.00
July 16, 1962	7,249.50

Request for Admissions

7. Exhibit "Construction Note Number 2, 1960" is a true and accurate reproduction of the original note executed by plaintiff.

8. With reference to "Construction Note Number 2, 1960" and pursuant thereto, on the dates and in the amounts as set forth below, defendant U. S. Steel Homes Credit Corporation advanced various sums of money to the plaintiff. The initial advance of $64,694.85 as of December 14, 1961 carried with it an obligation of accrued interest of $2,391.36 as of that date and was an obligation transferred from Construction Note Number 1, 1960.

Date	Funds Advanced
December 14, 1961	$64,694.85
December 15, 1961	1,000.—
December 26, 1961	7,284.14
December 26, 1961	4,000.—
January 22, 1962	3,878.29
January 26, 1962	6,248.74
February 13, 1962	2,000.00
March 2, 1962	1,000.00
March 6, 1962	7,866.70
March 15, 1962	3,087.48
March 15, 1962	2,000.00
March 21, 1962	1,000.—
March 29, 1962	7,006.43
April 5, 1962	1,000.00
April 13, 1962	4,024.80
April 13, 1962	2,000.00
April 19, 1962	3,057.90
April 19, 1962	1,000.00
April 20, 1962	3,594.50
April 20, 1962	1,000.—
May 1, 1962	1,000.—
May 7, 1962	1,000.—
May 10, 1962	3,370.18

Date	Funds Advanced
May 10, 1962	11,197.14
May 28, 1962	2,000.00
June 4, 1962	6,115.24
June 4, 1962	2,000.00
July 26, 1962	6,903.84

9. With reference to "Construction Note Number 2, 1960," on the dates and in the amounts set forth below the plaintiff repaid the defendant U. S. Steel Homes Credit Corporation as principal various sums of money.

Date	Principal Repaid
January 11, 1962	$9,755.—
March 7, 1962	5,699.35
April 20, 1962	5,505.78
May 21, 1962	8,509.50
May 28, 1962	8,480.00
May 31, 1962	5,755.72
May 31, 1962	7,632.00
June 14, 1962	8,244.00
June 27, 1962	7,650.80
July 2, 1962	5,068.13
July 10, 1962	5,594.50
July 31, 1962	5,047.11
August 7, 1962	4,073.62
August 14, 1962	3,830.22
August 30, 1962	8,690.00
August 30, 1962	7,460.00
September 21, 1962	11,795.00

10. Exhibit "Land Note, 1961" is a true and accurate reproduction of the original note executed by plaintiff.

11. With reference to "Land Note, 1961" and pursuant thereto, on the dates and in the amounts as set forth below, defendant U. S. Steel Homes Credit Corporation advanced various sums of money to the plaintiff.

Request for Admissions

Date	Funds Advanced
August 2, 1961	$ 2,312.—
August 2, 1961	56,688.—

12. With reference to "Land Note, 1961," on the dates and in the amounts set forth below the plaintiff repaid the defendant, U. S. Steel Homes Credit Corporation as principal various sums of money.

Date	Principal Repaid
October 10, 1961	$2,200.—
October 26, 1961	2,200.—
November 16, 1961	2,200.—
September 14, 1962	2,200.—

13. Exhibit "Collateral Note, 1961" is a true and accurate reproduction of the original note executed by plaintiff.

14. With reference to "Collateral Note, 1961" and pursuant thereto, on August 2, 1961 defendant U. S. Steel Homes Credit Corporation advanced $2,950 to the plaintiff.

15. On or about July 12, 1962 and no later than July 17, 1962, you received a communication from defendant U. S. Steel Homes Credit Corporation in accordance with a copy thereof attached hereto.

Albert F. Reutlinger

I certify that a copy of this Request for Admissions was mailed this 24 day of October, 1962 to Messrs. Kenneth L. Anderson and A. Scott Hamilton, Jr., Attorneys for Plaintiff, 1805 Kentucky Home Life Building and 1015 Kentucky Home Life Building, Louisville 2, Kentucky.

/s/ Albert F. Reutlinger

Request for Admissions

COPY

REGISTERED MAIL — RETURN
RECEIPT REQUESTED

July 12, 1962

Mr. A. B. Fortner, Jr., President
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

Dear Mr. Fortner: Re: Loan Nos. 1568 and 1602

Reference is made to the subject loans which were consummated with your company under Loan Agreements dated October 28, 1960, and August 2, 1961, respectively, and which are evidenced by the following notes with outstanding balances and which are secured by the following mortgages:

Loan No. 1568

1. Land Note No. 2 dated October 28, 1960, maturing December 31, 1962.

2. Construction Note No. 1 dated October 28, 1960, which note, as extended, matured June 1, 1962.

3. Construction Note No. 2 dated October 28, 1960, maturing December 31, 1962.

4. Mortgage Deed dated October 28, 1960, securing the aforementioned notes.

Loan No. 1602

1. Land Note dated August 2, 1961, maturing December 31, 1962.

2. Collateral Note dated August 2, 1961, maturing December 31, 1962.

3. Mortgage Deed dated August 2, 1961, securing the aforementioned notes.

In view of your failure to pay the outstanding balance on Construction Note No. 1 on or before maturity and in

view of your further failure to pay interest on the Land Notes evidencing both loans as required under the provisions of the Notes, Mortgages, and Loan Agreements, the amounts outstanding under all Notes evidencing your loans, together with the interest accrued thereon, are hereby declared to be due and payable pursuant to the provisions of said Notes, Mortgages, and Loan Agreements and demand for payment thereof is made herewith.

There is set forth below the outstanding principal balance due on all notes, the interest accrued thereon through July 12, 1962, and the daily interest accrual rate:

Note	Loan	Principal Outstanding	Interest accrued through 7/12/62	Daily Interest Accrual
Land #2	1568	$183,157.60	$2,520.39	$30.53
Construction #1	1568	32,652.00	1,053.60	5.44
Construction #2	1568	82,435.45	2,902.76	12.59
Land	1602	52,400.00	681.20	8.73
Collateral	1602	2,950.00		

It will be appreciated if you will promptly remit to this office the above amounts in full payment of your obligations in order to avoid the necessity of placing this matter in the hands of our attorney for collection.

Very truly yours,

/s/ W. L. Rollins
W. L. Rollins
Assistant General Manager

ANSWER TO INTERROGATORIES.

(Q. 1) With respect to the allegations found in Paragraph 3 of the complaint:

(a) Give the date plaintiff's Certificate of Incorporation was issued by the Secretary of State of Kentucky and the date a copy of its Articles of Incorporation

were filed in the office of the Jefferson County Court Clerk, Kentucky, giving the recorded location of such.

(A. 1a) Plaintiff's Certificate of Incorporation was issued by the Secretary of State of Kentucky on the 29th day of August, 1956, and the Articles of Incorporation were filed in the office of the Jefferson County Court Clerk, Kentucky on August 29, 1956, in Corporation Book 95 at Page 201.

(Q. 1b) Furnish herewith a copy of plaintiff's Articles of Incorporation and all amendments thereto.

(A. 1b) Copies of the plaintiff's Articles of Incorporation and Amendments thereto are available for inspection at the office of Hamilton, Hopson & Hamilton, 1015 Kentucky Home Life Building, Louisville, Kentucky.

(Q. 1c) Give a chronological accounts of plaintiff's stockholders, their addresses, their equities in the corporation, the class of stock owned, and the method of acquisition of such stock, i.e., original issue from the company or transfer. If original issue whether such was issued for money or services. If a transfer, the name and address of the person from whom the stock was transferred. The scope of this inquiry concerning plaintiff's stockholders is from plaintiff's incorporation down to the present time.

(A. 1c) A chronological account of plaintiff's stockholders, their addresses, their equities in the corporation, class of stock owned, and the method of acquisition of such stock, and if a transfer, the name and address of the person from whom the stock was transferred from plaintiff's incorporation down to the present time, is as follows:

A. B. Fortner, Jr., 4125 South Third Street, Louisville, Kentucky; Cash — Six Thousand ($6,000.00) Dollars — Sixty (60) Shares, Preferred; Original Issue; Equity is undeterminable at this time. Cash — Five Hundred ($500.00) Dollars — Five (5) Shares, Common; Original Issue; Equity is undeterminable at this time.

Answer to Interrogatories

Marian Rose Flynn, 4917 Valley Station Road, Valley Station, Kentucky; Cash — Five Hundred ($500.00) Dollars — Five (5) Shares, Common; Original Issue; Equity is undeterminable at this time.

A. B. Fortner, Jr., 4125 South Third Street, Louisville, Kentucky; Three (3) Shares, Common; Transferred from Marian Rose Flynn, 4917 Valley Station Road, Valley Station, Kentucky; Equity is undeterminable at this time.

Ruth Fortner, 4125 South Third Street, Louisville, Kentucky; One (1) Share, Common; Transferred from Marian Rose Flynn, 4917 Valley Station Road, Valley Station, Kentucky; Equity is undeterminable at this time.

Samuel Steinfeld, 1106 Kentucky Home Life Build- Louisville, Kentucky; One (1) Share, Common; Transferred from Marian Rose Flynn, 4917 Valley Station Road, Valley Station, Kentucky; Equity is undeterminable at this time.

A. B. Fortner, Jr., 4125 South Third Street, Louisville, Kentucky; One (1) Share, Common; Transferred from Samuel Steinfeld, Kentucky Home Life Building, Louisville, Kentucky; Equity is undeterminable at this time.

(Q. 1d) Give the names and addresses of the persons who have in their possession:

i. Plaintiff's minute books including By-Laws,
ii. Plaintiff's stock records, and
iii. Plaintiff's financial records.

(A. 1d: i, ii, iii) The name and address of the person who has in his possession the plaintiff's minute books, including By-Laws, and the plaintiff's stock records is A. Scott Hamilton, 1015 Kentucky Home Life Building, Louisville, Kentucky, and the name and address of the person who has possession of the plaintiff's financial rec-

ords is William S. Wetterer, Fincastle Building, Louisville, Kentucky.

(Q. 1e) Give the name, address and title of plaintiff's corporate officers.

(A. 1e) The names, addresses and titles of plaintiff's corporate officers are:

A. B. Fortner, Jr. 4125 South Third Street,
Louisville, Kentucky, President;
Edna B. Herberman, 4125 South Third Street,
Louisville, Kentucky, Secretary;
Herman R. Miles, 4125 South Third Street,
Louisville, Kentucky, Treasurer.

(Q. 1f) Give the name and address of plaintiff's directors.

(A. 1f) The names and addresses of plaintiff's directors are as follows:

A. B. Fortner, Jr., 4125 South Third Street,
4125 South Third Street
Louisville, Kentucky
Ruth L. Fortner
4125 South Third Street
Louisville, Kentucky
Edna B. Herberman
4125 South Third Street
Louisville, Kentucky

(Q. 2) With respect to the allegations found in Paragraph 13 of the complaint:

(a) Give the source of your information and all supporting facts relied upon in alleging that United States Steel Corporation's prefabricated homes were purchased "at artificially high prices."

(A. 2a) It is plaintiff's content that a comparison of the prices of prefabricated houses manufactured by United States Steel Corporation with the prices of similar and

comparable prefabricated houses manufactured by others will show artificially high prices charged by United States Steel Corporation, with no justifiable ground for said higher prices. It is plaintiff's contention that an analysis of the costs of United States Steel Corporation to manufacture and sell their prefabricated houses when compared with the selling prices of their respective models of prefabricated houses will also establish that United States Steel Corporation sold and the plaintiff purchased said houses at artificially high prices. Said cost figures must be obtained from United States Steel Corporation before definite figures can be established.

Copies of the price lists or price quotations which are available at the present time are available in the offices of Hamilton, Hopson & Hamilton, Kentucky Home Life Building, Louisville, Kentucky, for inspection and copying. Said quoted prices are for models comparable to United States Steel Corporation's Model B-1.

(Q. 2b) What is meant by the term "artificially?"

(A. 2b) "Artificially" high prices as used in the complaint means that United States Steel Corporation sold its prefabricated houses at prices not justified by their cost, and at prices not justified by conditions in the market place; i.e. prices not competitive with comparable models sold by other manufacturers, and prices not justified by the quality of the prefabricated homes and component parts thereof sold by United States Steel Corporation.

(Q. 3) With regard to the allegations found in Paragraph 15 of the complaint:

(a) List by lot number and street number the 70 houses allegedly constructed of faulty and defective material and give the date of purchase by plaintiff of material from United States Steel Corporation for each home and the date of delivery of such material to plaintiff for each home.

(A. 3a)

Answer to Interrogatories

Lot No.	Street No.	Date of Purchase of Material	Date of Delivery of Material	Name of purchaser
70	10702 Leelah Court	5-26-61	6-20-61	Elroy Farris
212	10801 Jacqueline Way	1-19-62	3- 2-62	Robert L. Melton
211	10803 Jacqueline Way	10-27-61	11-14-61	Chester A. Page
215	10804 Jacqueline Way	9-11-61	9-26-61	Carl H. Neville
210	10805 Jacqueline Way	5-28-61	7-20-61	Charles L. Mitchell
208	10809 Jacqueline Way	6-21-61	7-24-61	Geo. A. Austin
389	10810 Jacqueline Way	4- 4-62	4-26-62	Donald Nierengarten
391	10900 Jacqueline Way	10-27-61	12- 7-61	Dallas Ballou
190	10707 Golden Drive	10- 3-61	10-10-61	Edwin V. Wright
189	10709 Golden Drive	10-29-61	11- 3-61	Clarence Chesser
188	10711 Golden Drive	5-29-61	7-14-61	Harold E. Poole
187	10713 Golden Drive	10-27-61	11-20-61	Jerome Hauck
186	10801 Golden Drive	10-10-61	10-24-61	Jack B. Johnson
195	10802 Golden Drive	1- 4-62	1-29-62	James Ray
196	10804 Golden Drive	1- 4-62	2- 5-62	Larry L. Keys
182	10809 Golden Drive	9-27-61	10- 5-61	J. E. Chasteen
202	10818 Golden Drive	10-27-61	11- 9-61	Carl L. Hasken
176	10821 Golden Drive	10-27-61	11- 8-61	Charles Waller
79	10706 Milwaukee Way	6-16-61	8- 8-61	Ronald Woprice
80	10708 Milwaukee Way	9-11-61	10- 5-61	Stephen N. Massie
81	10710 Milwaukee Way	5-15-62	5-24-62	Maurice Goldsmith
82	10712 Milwaukee Way	1- 4-62	2-14-62	Merle E. Stepp
83	10714 Milwaukee Way	2-20-62	3-31-62	Harles Hampton
84	10800 Milwaukee Way	4-30-62	5- 4-62	James C. Fort
410	10805 Milwaukee Way	5-16-61	5-18-62	Ernest R. Walker
50	5104 Constance Drive	4-12-61	4-21-61	James E. Marquess
20	5107 Constance Drive	1-16-61	2-21-61	Jesse A. Blay
19	5105 Constance Drive	1-16-61	2-20-61	Joseph R. Denzik
104	10912 Milwaukee Way	5-15-61	5-26-61	Chestonia Riggs
336	10800 Beatrice Way	4-26-61	5-16-61	Paul W. Moates
52	5108 Constance Drive	5-29-61	6-16-61	James B. Tucker
51	5106 Constance Drive	5-15-61	6- 1-61	Herbert E. Gordon
66	10710 Leelah Court	5-15-61	5-22-61	Donald Mitchell
69	10704 Leelah Court	5-10-61	5-19-61	John K. Nichols
323	10809 Beatrice Way	5-10-61	6-23-61	Capt. E. Cummings
65	10712 Leelah Court	6- 1-61	6-22-61	R. L. Hagerman
57	10703 Leelah Court	1-16-61	4-14-61	Darrell Adams
363	10712 Emma Jean Way	5-10-61	6- 9-61	Olin F. Brookins
59	10707 Leelah Court	6-16-61	6-28-61	James B. Rozier
58	10705 Leelah Court	1-16-61	4-20-61	Pete Waclowsky
62	10713 Leelah Court	7- 3-61	7-25-61	Earl C. Craddock
63	10715 Leelah Court	5-26-61	6-14-61	James Hodges
367	10804 Emma Jean Way	6-27-61	7-13-61	G. W. Ramsey
319	10803 Beatrice Way	5-10-61	5-29-61	Charles R. Crawley
67	10708 Leelah Court	7- 5-61	7-27-61	Wm. R. Jansen
21	5109 Constance Drive	1-16-61	3-19-61	James M. Schlangen

Answer to Interrogatories

Lot No.	Street No.	Date of Purchase of Material	Date of Delivery of Material	Name of purchaser
307	10809 Marcitus Road	6-27-61	7- 7-61	John P. Collins
60	10709 Leelah Court	7-20-61	8- 4-61	Vernon Hornbach
305	10805 Marcitus Road	7-10-61	8- 3-61	E. P. Monroe, Jr.
710	10901 Dearing Road	9-11-61	9-20-61	Paul Beavin
64	10714 Leelah Court	8-29-61	8-31-61	Charles Cranmer
68	10706 Leelah Court	9-11-61	9-25-61	Newton C. Stucker
61	10711 Leelah Court	9- 5-61	9-15-61	Jack W. Hays
28	5205 Constance Drive	1-16-61	7-24-61	Heinz Koenig
71	5200 Constance Drive	11-14-60	11-25-60	E. W. Sims
27	5203 Constance Drive	11-21-60	1- 6-61	James G. Edster
26	5201 Constance Drive	11-21-60	12-30-60	John Cunningham
56	5116 Constance Drive	11-14-60	11-22-60	Jimmie Wood
217	10808 Jacqueline Way	3- 1-62	3-16-62	Thomas D. Marquess
209	10807 Jacqueline Way	10-24-61	10-27-61	Jacob D. Hooks
25	5117 Constance Drive	8-18-61	8-25-61	B. G. Huddleston
72	5206 Constance Drive	11-14-60	11-30-60	W. J. Lish
48	5016 Constance Drive	10- 3-61	10-26-61	Plaintiff
192	10703 Jacqueline Way	10- 3-61	10-13-61	Plaintiff
78	10704 Jacqueline Way	2- 2-62	2-14-62	Plaintiff
185	10803 Golden Drive	10-27-61	11- 7-61	Plaintiff
477	10907 Golden Drive	10-10-61	10-31-61	Plaintiff
412	10801 Milwaukee Way	10-27-61	11-21-61	Plaintiff
478	10909 Golden Drive	10-10-61	10-31-61	Plaintiff
49	5100 Constance Drive	10-29-61	12-27-61	Plaintiff

(Q. 3b) Give the names and address (if such address is different from the street address listed above) of the purchasers of the 70 homes. If plaintiff is still the owner of any such homes, so state.

(A. 3b) The names of the purchasers of the 70 homes are listed above, also listing the homes that are owned by Plaintiff. No information is available as to any change of address of purchasers.

(Q. 3c) List separately under each of the 70 homes, in specific detail, the items in each home furnished by United States Steel Corporation alleged to be faulty and defective.

(A. 3c) The plaintiff contends that United States Steel Corporation furnished for each of the 70 homes defective dry wall interior panels, windows and closet doors. In

many of the homes the cabinet tops, screens and gables have been furnished in a defective condition or have proven to be defective.

In addition, from information available at the present time, the following defects have been identified by verbal or written statements with the following specific houses:

Lot No.	Defective Components
70	Dry Wall interior panels
	Kitchen cabinet top
	Closet doors
	Gables
212	Dry Wall interior panels
	Closet doors
	Gables
211	Dry Wall interior panels
	Closet doors
	Gables
	Windows
215	Dry wall interior panels
	Closet doors
	Gables
	Front and rear door trim
210	Dry wall interior panels
	Closet doors
	All doors
	Gables
	Insulation
208	Dry wall interior panels
	Kitchen Cabinet top
	Closet doors
	Gables
389	Dry wall interior panels
	Closet doors
	Gables
	Window

Lot No.	Defective Components
391	Dry wall interior panels
	Closet doors
	Gables
190	Dry wall interior panels
	Closet doors
	Gables
	Prime paint coat on windows
	Closet door trim not furnished
189	Dry wall interior panels
	Closet doors
	Gables
	Storm door inserts
	Closet door trim not furnished
188	Dry wall interior panels
	Closet doors
	Gables
	Storm door inserts
	Kitchen cabinet top
	Kitchen sink
187	Dry wall interior panels
	Closet doors
	Storm door jamb
	Windows
	Outside doors
	Gables
	Only two hinges on kitchen door
186	Dry wall interior panels
	Closet doors
	Gables
	Picture window
	Storm door jamb
195	Dry wall interior panels
	Closet doors
	Gables
	Rear door

Lot No.	Defective Components
196	Dry wall interior panels
	Closet doors
	Gables
	Window shipped with broken glass
182	Dry wall interior panels
	Closet doors
	Gables
202	Dry wall interior panels
	Closet doors
	Gables
	Front sliding window
	Screens
	Bedroom door
	Front door hardware
176	Dry wall interior panels
	Closet doors
	Gables
	Window weather stripping
79	Dry wall interior panels
	Closet doors
	Gables
	Storm doors
80	Dry wall interior panels
	Closet doors
	Gables
	Picture window
	Windows
	Kitchen cabinets sag
81	Dry wall interior panels
	Closet doors
	Gables
	Garage door
	Bathroom screen

Lot No.	Defective Components
82	Dry wall interior panels
	Closet doors
	Kitchen cabinets sag
	Gables
83	Dry wall interior panels
	Closet doors
	Kitchen cabinets sag
	One door of wrong size delivered
84	Dry wall interior panels
	Closet doors
	Interior doors
	Gables
410	Dry wall interior panels
	Windows
	Bedroom doors
	Front door
	Front door trim
	Front window
	Sink rim
	Gables
50	Dry wall interior panels
	Closet doors
	Kitchen cabinet top
	Gables
20	Dry wall interior panels
	Closet doors
	Storm door
	Gables
	Kitchen cabinet tops
	Bedroom door
	Insulation
19	Dry wall interior panels
	Closet doors
	Kitchen cabinet top
	Gables
	Storage room door

Lot No.	Defective Components
204	Information not available at this time.
336	Dry wall interior panels Closet doors Garage flashing Gables Door in kitchen cabinet
52	Dry wall interior panels Closet doors Kitchen cabinet top
51	Dry wall interior panels Bedroom windows Kitchen cabinet top
66	Dry wall interior panels Closet doors Kitchen cabinet top
69	Dry wall interior panels Closet doors Kitchen cabinet top Gables Front door jamb Broken roof rafter Insulation
323	Dry wall interior panels Closet doors Kitchen cabinet top
65	Dry wall interior panels Closet doors Kitchen cabinet top
57	Dry wall interior panels Kitchen cabinet top Gables Front window molding Insulation

Lot No.	Defective Components
363	Dry wall interior panels
	Closet doors
	Gables
	Kitchen screens
	Front elevation panels
59	Dry wall interior panels
	Closet doors
	Kitchen cabinet top
	Plywood on roof
	Front wood paneling
58	Dry wall interior panels
	Closet doors
	Kitchen cabinet top
	Windows
62	Dry wall interior panels
	Kitchen cabinet top
	Screens
	Gables
	Kitchen cabinets
63	Dry wall interior panels
	Closet doors
	Kitchen cabinet top
	Gables
	Screens
367	Dry wall interior panels
	Closet doors
	Kitchen cabinet top
	Sink molding
	Insulation
	Hip trusses
319	Dry wall interior panels
	Closet doors
	Kitchen cabinet top
	Roof
	Front door and jamb

Lot No.	Defective Components
67	Dry wall interior panels Closet door Kitchen cabinet top Gables
21	Dry wall interior panels Closet doors Kitchen cabinet top Gables Storm door
307	Dry wall interior panels Closet doors Kitchen cabinet top Storm door insert Skirt board for garage not furnished
60	Dry wall interior panels Closet doors Kitchen cabinet top Gables
305	Dry wall interior panels Closet doors Gables Garage flashing
710	Information not available at this time.
64	Dry wall interior panels Closet doors Kitchen cabinet top Rear screen door
68	Dry wall interior panels Closet doors Kitchen cabinet top
61	Dry wall interior panels Closet doors Kitchen cabinet top

Lot No.	Defective Components
28	Dry wall interior panels
	Closet doors
	Kitchen cabinet top
	Front molding
71	Dry wall interior panels
	Kitchen cabinet top
	Gables
	Kitchen cabinet door
27	Dry wall interior panels
	Kitchen cabinet top
	Gables
	Inadequate roof flashing
	Portion of porch ceiling not furnished
26	Dry wall interior panels
	Closet doors
	Kitchen cabinet top
	Gables
56	Dry wall interior panels
	Kitchen cabinet top
	Gables
217	Dry wall interior panels
	Closet doors
	Kitchen cabinet top
	Gables
209	Dry wall interior panels
	Closet doors
	Gables
	Front screen insert
25	Dry wall interior panels
	Closet doors
	Gables
72	Dry wall interior panels
	Window molding
	Closet doors
	Closet door trim

Lot No.	Defective Components
48	Dry wall interior panels Closet doors Gables Kitchen cabinets Garage flashing
192	Dry wall interior panels Closet doors Gables
78	Dry wall interior panels Storage room dry wall not furnished Closet doors Gables
185	Dry wall interior panels Closet doors Gables
412	Dry wall interior panels Closet doors Gables
477	Dry wall interior panels Closet doors Kitchen cabinets Gables Garage flashing
478	Dry wall interior panels Closet doors Kitchen cabinet Gables
49	Dry wall interior panels Closet door Gables Picture window

(Q. 3d). With reference to Interrogatory 3 (c) above, state whether or not a claim for replacement of faulty and

defective material was made to United States Steel Corporation, giving the date such claim was made, the manner of its making, i.e., verbal or written, if verbal the name of the representative of United States Steel Corporation to whom such claim was made, the component parts claimed to be defective and identify the particular home to which such allegedly faulty and defective materials were furnished.

(A. 3d) Complaints have been made to United States Steel Corporation concerning the defective components identified in response to Interrogatory 3(e) above. Those complaints were made primarily in verbal form; most of them via telephone. The complaints were made to the following persons from time to time, the exact date being unknown:

Edward Akers
Charles Schultz
George Rosenbarger
Harry R. Black
Paul Grayson

Plaintiff does not have available at this time any written complaints made to United States Steel Corporation concerning defective components. Plaintiff is seeking to identify any such written complaints in the Interrogatories served upon defendant, United States Steel Corporation.

(Q. 3e) If claim was made against the United States Steel Corporation as outlined in Interrogatory 3(d) above, give the results of each such claim, i.e., whether or not the claim was honored by United States Steel Corporation in whole or in part and if in part, to what extent, or if denied, the name of the representative of United States Steel Corporation denying such claim and the reasons given by United States Steel Corporation for denying such claim.

(A. 3e) The complaints of the plaintiff were honored in part after long delays on some occasions in that some defective component parts were replaced. However, the

claims, insofar as they were related to the cost of labor to replace the various defective components, were not honored by United States Steel Corporation.

Plaintiff does not have accurate information at this time showing the number of claims honored by United States Steel Corporation. Undoubtedly the defendant, United States Steel Corporation, has records showing the claims honored by it. The plaintiff is endeavoring to identify such records in the Interrogatories which have been served upon United States Steel Corporation.

The claims which were denied by United States Steel Corporation were denied primarily by Edward Akers and Harry R. Black. The reason given for denial of the plaintiff's claims was that it was not the policy of United States Steel Corporation to honor such claims.

(Q. 3f) Have any of the purchasers of the 70 homes made a verbal claim to plaintiff based on faulty and defective materials in the home? If so, give their names and addresses, and the approximate date such claim was made, and the substance of each such claim.

(A. 3f) Yes.

The owners of each of the homes purchased from the plaintiff have made verbal complaints to the plaintiff from time to time since the purchase of each home. Those complaints have centered about the dry wall interior panels, the kitchen cabinet tops, the closet doors and the window screens. Complaints have also been registered verbally concerning gables warping and kitchen cabinets sagging due to insufficient supports being provided upon which to hang the cabinets.

The defects listed in response to Interrogatory 3(c) above were brought to the attention of the plaintiff primarily by verbal complaints made by the owners of said homes. The dates of those verbal complaints are not known. The names and addresses of the complaining owners are listed in response to Interrogatory 3(a) and are not repeated.

(Q. 3g) Have any of the purchasers of the 70 homes made written claim to plaintiff for allegedly faulty and defective materials in the homes? If so, furnish with your answer a copy of each such written claim or complaint; and

(A. 3g) Yes.

A number of written complaints have been made concerning defective components, mostly in the form of notes or lists dropped by the plaintiff's offices. Most of those written complaints were not retained by the plaintiff. Copies of the written complaints which were retained by plaintiff are available in the offices of Hamilton, Hopson & Hamilton, Kentucky Home Life Building, Louisville, Kentucky, for inspection and copying.

(Q. 3h) Have any of the purchasers of the 70 homes made either verbal or written complaint or claim to plaintiff concerning workmanship or construction as distinguished from faulty or defective materials? If so, as to verbal complaints concerning workmanship or construction, give the name and address of each person making such complaint, the approximate date made and the substance of such; as to written complaints concerning workmanship or construction, furnish a copy of each such complaint with your answer to this Interrogatory.

(A. 3h) Yes.

Certain of the purchasers have made verbal complaints concerning workmanship and construction as distinguished from faulty or defective materials or components.

Those complaints are identified below by lot number. The names and addresses of the owners appear in response to Interrogatory 3(a) above. The exact date of the verbal complaints are not known.

Lot No.	Complaint
212	Kitchen tile
211	Kitchen tile
	Foundation stucco
	Leak in sink and tub
	Trees died

Lot No.	Complaint
208	Rear walk
389	Fill dirt over septic tank
190	Basement leaks Pop-off valve on water heater
188	Door bell Clean brick Trees died Basement leaks Fill dirt over septic tank
187	Tighten quarter round in living room
186	Kitchen floor Bathroom floor
195	Kitchen floor Bathroom floor Shrubs Repair front sidewalk
182	Trees died
202	Lower septic tank Pipe vent Valve handle on water heater
80	Fix crawl hole opening Foundation stucco Hardwood floor Bathroom tile Heat deflector on cabinets Brace kitchen floor
81	Floor tile Fill dirt over septic tank Porch light Foundation stucco Trap door in garage
82	Shrubs and Trees Bathroom leak

Answer to Interrogatories

Lot No.	Complaint
84	Breather cap on septic tank
410	Bathroom drain
50	Shrubs Foundation stucco
20	G. E. adjust built-in oven Foundation stucco
336	Fill low spot in yard Fix crawl space Hardwood floor
52	Front stoop
51	Hardwood floor Bathroom floor Rear stoop
66	Adjust pop-off valve on water heater
69	Front walk Repair stone
57	Bathroom floor Adjust pop-off valve on water heater
363	Refinish hardwood floors Foundation bolts needed nuts Plastic covering underneath house
59	Broken tile in kitchen
58	Replace some roof shingles
62	Valley tin on roof rusted Drain in patio
63	Kitchen floor tile
367	Replace a living room tile cracked Adjust furnace

Lot No.	Complaint
319	Refinish dining room floor
	Concrete sill in garage
	Broken tile in kitchen
	Adjust furnace
	Roof flashing
	Basement leaks
	Kitchen tile
307	Leak in basement
	Leak behind bath
	Holes in drive
	Family room floor
60	Kitchen floor
	Leak in basement
217	Paint bedroom baseboard
	Chrome guard on shower
	Furnace flue flashing
209	Door to attic

Any written complaints which have been made and which are presently available to the plaintiff concerning workmanship and construction are included in the documents referred to in the answer to Interrogatory 3(g) above and are available in the offices of Hamilton, Hopson & Hamilton, Kentucky Home Life Building, Louisville, Kentucky, for inspection and copying.

(Q. 4) With respect to the allegations found in Paragraph 17 of the complaint:

(a) State the basis for the allegation that the purchase of the homes was "at unreasonably high prices" giving specific facts and if available, written data indicating that such prices were unreasonable.

(A. 4a) See the answer to Interrogatories 2(a) and 2(b), supra.

Answer to Interrogatories

(Q. 4b) Give the additional sum spent on each house making specific itemized reference to the house and item(s) for which each such expenditure was made and the amount of expenditure allocated to each item.

(A. 4b) Additional sums have been spent on each house, primarily for additional interest expense incurred due to the delay in development of the subdivision caused by the defective homes furnished plaintiff by United States Steel Corporation. As of the date of the filing of the complaint, the plaintiff had earned no profit in its overall operation of developing the subdivision. Since each home was budgeted at a profit to plaintiff of $900.00, plaintiff has spent an additional sum of approximately $900.00 on each house as a result of the delays caused by the defendants.

(Q. 4c) Give the period of delay of completion separately as to each home and the name and address of the witness (or witnesses) plaintiff intends to use to prove these allegations concerning delay in completion.

(A. 4c) The period of delay of completion as to each specific home varies. Under the original plans for construction of the homes in question, the period of completion was scheduled for approximately 30 days. The dates that construction was commenced and the construction was completed for each of the 70 homes are furnished in response to Interrogatory 4(d) below. As to each such home, the approximate period of delay would be the excessive time taken above and beyond the budgeted 30 days. In addition, however, but for the delay caused by the defective components furnished by United States Steel Corporation, the remaining homes scheduled to be built in the subdivision in question would and could have been completed on schedule. The construction of all the homes has, therefore, been delayed by virtue of the conduct of the United States Steel Corporation.

Answer to Interrogatories

The following persons are presently known to the plaintiff to be witnesses for the plaintiff concerning the delay in question:

A. B. Fortner
4125 South Third Street
Louisville, Kentucky

Earl Smith
4125 South Third Street
Louisville, Kentucky

Herman Miles
4125 South Third Street
Louisville, Kentucky

Robert Robinson
4125 South Third Street
Louisville, Kentucky

(Q. 4d) Give the date construction was commenced, and the date construction was completed as to each of the 70 homes.

(A. 4d) The date construction was commenced and the date construction was completed as to each of the 70 homes are as follows:

Lot No.	Date Construction Commenced	Date Construction Completed
70	6-21-61	8-22-61
212	3- 3-62	6- 4-62
211	11-15-61	3-28-62
215	9-27-61	12- 1-61
210	7-21-61	10- 2-61
208	7-25-61	10- 2-61
389	4-27-62	6-28-62
391	12- 8-61	4-16-62
190	10-11-61	12-13-61
189	11- 4-61	1-26-62
188	7-15-61	10- 5-61
187	11-21-61	2-26-62

Lot No.	Date Construction Commenced	Date Construction Completed	
186	10-25-61	2-23-62	
195	1-30-62	4-26-62	
196	2- 6-62	5-11-62	
182	10- 6-61	12-18-61	
202	11-10-61	3-10-62	(7-13-62)
176	11- 9-61	4-16-62	
79	8- 9-61	10- 3-61	
80	10- 6-61	12-18-61	
81	5-25-62	8-13-62	
82	2-15-62	5-25-62	
83	4- 1-62	5-28-62	
84	5- 5-62	7-25-62	
410	5-19-62	8- 1-62	
50	4-22-61	6- 8-62	
20	2-22-61	6-16-61	
19	2-21-61	5-26-61	closed July, 1961
104	5-27-61	7-18-61	
336	5-17-61	7-31-61	
52	6-17-61	8- 4-61	
51	6- 2-61	8-21-61	
66	5-23-61	8-16-61	
323	6-24-61	9-21-61	
65	6-23-61	9- 5-61	
57	4-15-61	6-16-61	
363	6-10-61	9- 1-61	
59	6-29-61	9-20-61	
58	4-21-61	6-19-61	
62	7-26-61	9-15-61	
63	6-15-61	8-25-61	
367	7-14-61	10- 8-61	
319	5-30-61	9- 7-61	
67	7-28-61	9-15-61	
21	3-20-61	6-19-61	
307	7- 8-61	9-26-61	
60	8- 5-61	9-29-61	

Lot No.	Date Construction Commenced	Date Construction Completed
305	8- 4-61	11- 9-62
710	9-21-61	11-23-61
64	9- 1-61	11-14-61
68	9-26-61	11-28-61
69	5-20-61	8-21-61
61	9-16-61	12-21-61
28	2-25-61	6-19-61
71	11-26-60	2-15-61 (11-3-61)
27	1- 7-61	2-25-62 (Approx.)
26	12-31-60	2-15-61
56	11-23-60	2-10-61 (7-31-61)
217	3-17-62	6-25-62 H. S. Homes
209	10-28-61	5-11-62
25	8-26-61	10- 4-61
72	12- 1-60	3-15-61
48	10-27-61	3-10-62 (4-17-62) model
192	10-14-61	4-17-62
78	2-15-62	5-10-62
185	11- 8-61	5-10-62
412	11-22-61	5-15-62
477	11- 1-61	5-10-62 (Approx.)
478	11- 1-61	5-10-62 (Approx.)
49	12-28-61	office not completed

(Q. 4e) Give the accounting basis on which the allegation is made that the loss of profit will be $900.00 on each home.

(A. 4e) The accounting basis upon which the allegation is made that the loss of profit is and will be $900.00 on each home, is as follows:

At the inception of the project, all prime costs of construction of the various models was computed on the basis of known costs. Such costs were based either upon contracts with subcontractors or firm prices from suppliers.

Sales commission fees were agreed upon before the project was started. Interest costs and the discount fee on F.H.A. mortgage loans were the only major costs which could not be predetermined and they were estimated at a range of $600.00 to $700.00 per house depending upon the model being constructed. The interest was estimated at $300.00 per house and the discount fee at $300.00, to $400.00 per house.

Based upon the known cost figures, the sales prices of the various models were set at a figure to produce a profit of $900.00 per house.

(Q. 4f) Is the real estate development about which this controversy centers the first such development undertaken by plaintiff? If not, give the name, location, and time of commencement of other similar developments.

(A. 4f) Yes.

However, Mr. A. B. Fortner and his personnel, by virtue of association with other companies, have had considerable experience in real estate development of the type which is the subject of this law suit.

(Q. 4g) State the basis for the allegation that plaintiff is unable to purchase prefabricated steel homes from other manufacturers thereof for erection on properties other than those encumbered with obligation to the defendant, U. S. Steel Homes Credit Corporation. List the names and addresses of such other manufacturers available to plaintiff and indicate with which of other such manufacturers plaintiff has negotiated, giving the name and address of the person representing such other manufacturers with whom plaintiff has conducted such negotiations.

(A. 4g) There is no such allegation in the plaintiff's complaint as is set forth in Interrogatory 4(g).

(Q. 4h) Give the names of such other manufacturers mentioned in Interrogatory 4(g) above that offer financial services in connection therewith, similar to the financial service afforded plaintiff by U. S. Steel Homes Credit

Corporation in connection with the transaction here in controversy.

(A. 4h) Moot.

(Q. 5) If the person making answer to the above Interrogatories makes such answer not on information known to him personally but on information acquired from others, give the name and address of the person from whom he acquired such information and indicate the specific interrogatory to which the information thus acquired pertains.

(A. 5) The following persons furnished information used to respond to the foregoing interrogatories:

Name	Interrogatories
Herman Miles 4125 South Third Street Louisville, Kentucky	2 (a) 3 (a) (c) (d) (e) (f) (h) 4 (a)
Earl Smith 4125 South Third Street Louisville, Kentucky	2 (a) 3 (a) (c) (d) (e) (f) (h) 4 (a) (c) (d)
Kenneth L. Anderson Woodward, Hobson & Fulton 1805 Ky. Home Life Bldg. Louisville 2, Kentucky	2 (b)
Ed Mudd 4125 South Third Street Louisville, Kentucky	3 (a) (c) (f) (h)
John Cooper 305 West Broadway Louisville, Kentucky	4 (b) (e)

The foregoing answers to interrogatories are true to the best of my information and belief.

/s/ A. B. Fortner

MOTION TO OVERRULE MOTION TO STRIKE.

Comes the plaintiff, Fortner Enterprises, Inc., and moves the Court to overrule the defendant's, U. S. Steel Homes Credit Corporation, motion to strike paragraphs 9, 10 and 11 to plaintiff's reply to amended counterclaim on the ground that such paragraphs do state a sufficient defense and are material to the issues presented in the amended counterclaim and on the ground that no legal authorities are cited by said defendant as required by Rule 5 of the Rules of this Court.

/s/ Kenneth L. Anderson

RESPONSE TO REQUEST FOR ADMISSIONS.

Plaintiff, Fortner Enterprises, Inc., for its Response to the Request for Admissions served upon it by U. S. Steel Homes Credit Corporation, states as follows:

1. Admitted.

2. Plaintiff does not have records which show the dates and amounts as set forth in Paragraphs 2 and 3 of the Request for Admissions. Plaintiff has compared the figures set forth in Paragraph 2 with those appearing in Paragraph 3 and finds that the balance of those two sets of figures is in accord with the balance appearing on the books of Fortner Enterprises, Inc. Plaintiff denies owing said defendant any sum of money on said "Land Note Number 2, 1960" at this time, however, due to the illegal conduct of the defendants as set forth in plaintiff's Complaint and Reply to Counterclaim filed herein.

3. See response to Paragraph 2 of the Request for Admissions, supra.

4. Admitted.

5. Plaintiff does not have records which show the dates and amounts as set forth in Paragraphs 5, 6, 8 and 9 of the Request for Admissions. Plaintiff did not segregate on its books and records sums received and sums paid

back under "Construction Note Number 1, 1960" and "Construction Note Number 2, 1960." Plaintiff has compared the balance of the sums set forth by U. S. Steel Homes Credit Corporation in Paragraphs 5, 6, 8 and 9 with the balance appearing on the books and records of Fortner Enterprises, Inc., and finds said balance to be substantially correct. Plaintiff denies owing said defendant any sum of money on said "Construction Note Number 1, 1960" and "Construction Note Number 2, 1960" at this time, however, due to the illegal conduct of the defendants as set forth in plaintiff's Complaint and Reply to Counterclaim filed herein.

6. See response to Paragraph 5 of the Request for Admissions, supra.

7. Admitted.

8. See response to Paragraph 5 of the Request for Admissions, supra.

9. See response to Paragraph 5 of the Request for Admissions, supra.

10. Admitted.

11. Plaintiff does not have records which show the dates and amounts as set forth in Paragraphs 11 and 12 of the Request for Admissions. Plaintiff has compared the figures set forth in Paragraph 11 with those appearing in Paragraph 12 and finds that the balance of those two sets of figures is in accord with the balance appearing on the books of Fortner Enterprises, Inc. Plaintiff denies owing said defendant any sum of money on said "Land Note, 1961" at this time, however, due to the illegal conduct of the defendants as set forth in plaintiff's Complaint and Reply to Counterclaim filed herein.

12. See response to Paragraph 11 of the Request for Admissions, supra.

13. Admitted.

14. Plaintiff admits that defendant, U. S. Steel Homes Credit Corporation, advanced to it $2,950.00 on or about

August 2, 1961, but denies owing said defendant any sum of money on said "Collateral Note, 1961" at this time, however, due to the illegal conduct of the defendants as set forth in plaintiff's Complaint and Reply to Counterclaim filed herein.

15. Admitted.

The foregoing Response to Request for Admissions is correct to the best of my information and belief.

/s/ Kenneth L. Anderson.

ANSWERS TO INTERROGATORIES ON BEHALF OF UNITED STATES STEEL CORPORATION.

Affiant, after being duly sworn, states that his name is Harry R. Black, that he is Vice President-Sales of United States Steel Corporation (Homes Division) and that the following answers to certain interrogatories propounded to United States Steel Corporation are true to the best of his information and belief.

1. For each of the years 1960, 1961 and 1962 identify the division or divisions of United States Steel Corporation which has or have as its or their function the manufacture, purchase and/or sale of component parts for prefabricated houses.

United States Steel Homes Division, United States Steel Corporation.

2. For each of the years 1960, 1961 and 1962, identify each officer and director of United States Steel Corporation by giving their names, titles and office addresses.

For the period from January 1, 1960, to the date of the service of the complaint in this action (July 23, 1962), the names, addresses and tenure of the directors and of the elected officers of United States Steel Corporation are as follows:

Answers to Interrogatories on Behalf of U. S. Steel Corp.

Directors

Name	Address	Tenure
Charles H. Bell	9200 Wayzata Blvd. Minneapolis, Minnesota	12-13-55 - to date
James B. Black	245 Market Street San Francisco, California	9-26-44 - to date
Roger M. Blough	71 Broadway New York, New York	8-26-52 - to date
Harllee Branch, Jr.	1330 W. Peachtree St., N.W. Atlanta, Georgia	1-11-62 - to date
Cason J. Callaway	(deceased)	3-28-44 - 4-12-61
Philip R. Clarke	135 South LaSalle St. Chicago, Illinois	4- 5-38 - 5- 7-62
Cleo F. Craig	20 Pine Street New York, New York	2-28-56 - to date
Harry P. Davison	(deceased)	3-25-52 - 7- 2-61
Benjamin F. Fairless	(deceased)	10-26-37 - 1- 1-62
John A. Fuller	600 Dorchester Blvd. W. Montreal, Canada	2-23-60 - to date
Clifford F. Hood	525 William Penn Place Pittsburgh, Pennsylvania	11-25-52 - to date
Arthur A. Houghton, Jr.	715 Fifth Avenue New York, New York	3-27-56 - to date
C. Jared Ingersoll	2110 Girard Trust Bldg. Philadelphia, Pennsylvania	3-27-51 - to date
Franklin J. Lunding	135 South LaSalle Street Chicago, Illinois	5- 7-62 - to date
John M. Meyer, Jr.	23 Wall Street New York, New York	1- 9-58 - to date
Alexander C. Nagle	399 Park Avenue New York, New York	5- 8-45 - to date
Herbert E. Smith	1230 Avenue of the Americas New York, New York	2-27-51 - 2-23-60
Joseph P. Spang, Jr.	40 Churchills Lane Milton, Massachusetts	10-27-53 - to date

Name	Address	Tenure
Robert C. Tyson	71 Broadway New York, New York	11-25-52 - to date
Enders M. Voorhees	14 East 68th Street New York, New York	1-12-37 - to date
Henry S. Wingate	67 Wall Street New York, New York	1-30-62 - to date
Leslie B. Worthington	525 William Penn Place Pittsburgh, Pennsylvania	10-10-59 - to date
Irving S. Olds	14 Wall Street New York, New York	10-27-36 - 2-23-60

Elected Officers

Name	Address		Tenure
Roger M. Blough	71 Broadway New York, New York	Chairman of Board	5- 3-55 - to date
Leslie B. Worthington	525 William Penn Pl. Pittsburgh, Pa.	President Chairman of Executive Committee	10-10-59 - to date
Robert C. Tyson	71 Broadway New York, New York	Chairman of Finance Committee	5- 8-57 - to date
Harvey B. Jordan	Park Plaza Apts. Pittsburgh, Pa.	Executive Vice President	10-10-59 - 7-31-60
John Pugsley	525 William Penn Pl. Pittsburgh, Pa.	Executive Vice President - Accounting	9- 1-59 - to date
Richard F. Sentner	525 William Penn Pl. Pittsburgh, Pa.	Executive Vice President - Commercial	1- 1-57 - to date
Malcolm W. Reed	151 North Drive Pittsburgh 38, Pa.	Executive Vice President - International and Raw Materials	2- 1-58 - 12-30-60
Stephen M. Jenks	525 William Penn Pl. Pittsburgh, Pa.	Executive Vice President - Engineering & Research	5- 5-59 - to date

Name	Address		Tenure
Norman B. Obbard	525 William Penn Pl. Pittsburgh, Pa.	Executive Vice President - International	1- 1-61 - to date
R. Conrad Cooper	525 William Penn Pl. Pittsburgh, Pa.	Executive Vice President - Personnel Services	2- 1-58 - to date
Edwin H. Gott	525 William Penn Pl. Pittsburgh, Pa.	Executive Vice President - Production	11-10-59 - to date
John S. Tennant	71 Broadway New York, New York	General Counsel	5- 3-55 - to date
Wilbert A. Walker	71 Broadway New York, New York	Comptroller	1- 1-56 - to date
William H. Lang	71 Broadway New York, New York	Treasurer	12- 1-59 - to date
Benjamin L. Rawlins	71 Broadway New York, New York	Secretary	10- 1-52 - to date

6. Identify the division or subsidiary or subsidiaries of United States Steel Corporation which has or have in its or their possession any statistics concerning the sale or manufacture of prefabricated homes or their component parts by any seller or manufacturer in the United States as a whole or any portion or portions thereof for the years 1957 through 1962.

United States Steel Corporation, United States Steel Homes Division and U. S. Steel Homes Credit Corporation.

6a. Identify each such set of statistics by giving the date, title, number of pages, person or organization which prepared or under whose auspices the statistics were prepared and the location of each such set of statistics.

6b. Identify for each such division or subsidiary and for each set of statistics the person or persons who have charge of or control over such statistics by giving their names, positions and business addresses.

In view of the many thousands of bound books and journals, current and back-number newspapers and periodicals, and publications of government agencies, which United States Steel Corporation has in its libraries, it would be an impossible task to set forth with absolute certainty a list of the statistics which it has in its possession which are concerned with the sale or manufacture of prefabricated homes or their component parts in the years 1957 through 1962. However, insofar as United States Steel Corporation is presently aware, such statistics as it and United States Steel Homes Division had in their possession on the date of the service of the complaint in this action (July 23, 1962) are identified in the attached list marked "Attachment to Answer to Interrogatories 6a and 6b." Similar information with respect to such statistics in the possession of U. S. Steel Homes Credit Corporation is set forth in the separate answer of U. S. Steel Homes Credit Corporation to plaintiff's interrogatories 3a and 3b addressed to it.

7. For each of the years 1957 through 1962 did United States Steel Corporation or any of its divisions submit statistics to the United States Government or any of its various departments, agencies or bureaus or to the United States Congress or any of its committees or subcommittees which concerned its sales or manufacture of component parts for prefabricated homes or of prefabricated homes by dollar value or unit? If so:

Yes.

7a. Identify each such report, including therein the date of the report, the governmental body to whom it was submitted, the title of the report, the type of statistics included therein, and the period of time covered.

7b. As to each such report, state whether or not a copy was retained by United States Steel Corporation or the division or divisions of United States Steel Corporation which prepared such report.

7c. If such reports were retained, identify their location and the person or persons having control of or charge of such documents by giving their names, business addresses and positions.

The reports submitted and the information concerning them are as follows:

(1) Reports entitled "Annual Survey of Manufactures Establishment Report", Form MA-100 of the Bureau of Census of U. S. Department of Commerce, were submitted annually to the Bureau of Census by United States Steel Homes Division. The dates of such reports for the period 1957-1962 (and the period covered therein) are as follows: April 27, 1962 (1958, 1959, 1960, 1961); March 23, 1961 (1958, 1959 and 1960); September, 1960 (1958 and 1959); May, 1959 (1954, 1955, 1956, 1957 and 1958); 1958 (1954, 1955, 1956 and 1957, and 1957 (1954, 1955 and 1956).

These reports include statistics with respect to number of employees, payrolls, total production worker man-hours, cost of materials, fuels, electricity, contract work done by others on its materials, year-end inventories, total capital expenditures, quantity of electricity purchased, value of products shipped and other receipts, location of plant, changes in location, ownership or operation, average hourly wages per production worker, hours worked per year per production worker, salaries and wages per dollar of shipments, and material cost per dollar of shipment.

(2) A report entitled "Census of Manufactures Supplementary Inquiries for 1957", Form MA-100 of the Bureau of Census, U. S. Department of Commerce covering expenditures for payrolls, maintenance, insurance, rents and taxes in 1957 was submitted by United States Steel Homes Division to the Bureau of Census, U. S. Department of Commerce in 1958.

(3) A report entitled "Exports of Manufactured Products", Form MA-161 of the Bureau of Census,

U. S. Department of Commerce, showing total sales, export sales and total number of employees in 1960, was submitted by United States Steel Homes Division to the Bureau of Census, U. S. Department of Commerce on September 7, 1961.

(4) Reports entitled "Statement of Products", Form BLS 790 Industry Class Supplement, of the Bureau of Labor Statistics, U. S. Department of Labor, were submitted by United States Steel Homes Division to the Bureau of Labor Statistics in 1962 and 1961. These reports disclosed the percentage of the principal activities of United States Steel Homes Division to its total activities, and the principal materials used in those activities for the year preceding the year of submission of the report.

(5) In May, 1960, United States Steel Corporation submitted to the Antitrust Division of the U. S. Department of Justice a completed questionnaire which requested specified information concerning United States Steel Homes Division to be furnished to enable the Antitrust Division to prepare for trial in a civil antitrust action which it had brought against National Homes Corporation challenging National Homes Company's acquisition of other companies. This questionnaire contained information relating to the manufacture and sales of United States Steel Homes, including sales for the years 1957, 1958 and 1959.

Copies of all of the aforementioned reports have been retained except for the MA-100 reports submitted in 1957 and 1958, which are described in (1) above. A copy of each of the retained reports is in the custody of William E. Lewellen, Comptroller, United States Steel Homes Division, United States Steel Corporation, 2549 Charlestown Road, New Albany, Indiana.

9. Separately for each of the years 1957 through 1962 give the following:

Answers to Interrogatories on Behalf of U. S. Steel Corp.

a. The number of packages of component parts for prefabricated houses and prefabricated houses sold in Jefferson County, Kentucky.

c(1). Give the number of packages of component parts for prefabricated houses, and prefabricated houses, sold to each such person or organization.

For each of the years 1957 through 1962 (to September 30), United States Steel Corporation shipped to Jefferson County, Kentucky, the following number of home packages:

Year	No. of United States Steel Home Packages
1957	13
1958	2
1959	0
1960	8
1961	73
1962 (to September 30)	61

11. Identify, by giving the following information as to each, all letters, memoranda, or other documents, or copies thereof, whether sent or received, now in the files of United States Steel Corporation and/or its divisions which concern themselves with sales of prefabricated homes or component parts thereof as a condition of or prerequisite to the giving of financing by U. S. Steel Homes Credit Corporation:

a. Date.

b. Author.

c. Person or persons to whom addressesd.

d. The place where located.

e. The person who has charge of or control of such documents, his business address and position.

f. Whether, a letter, memorandum or other type document.

There are no such letters, memoranda or other documents which are the subject of this Interrogatory. It is not now nor has it ever been a condition of or a prerequisite that sales of prefabricated homes or component parts thereof only be made to persons, firms or corporations which secure their financing from U. S. Steel Homes Credit Corporation.

12. For the years 1960, 1961 and 1962 identify each different prefabricated house or package of component parts for a prefabricated house sold by United States Steel Corporation and/or its divisions by giving its model number or other appropriate means of identification.

Year	Model Name	Model Number
1960	Beacon	B-1 through B-12
1960	Beacon	B-14 through B-26
1960	Andover	A-31 through A-36
1960	Bradford	BF-41 and BF-42
1960	Lynnfield	L-51 and L-52
1960	Brookline	BR-61 through BR-64
1960	Melrose	M-71 through M-74
1961	Star	E-201 through E-203
1961	Star	E-211 through E-213
1961	Star	E-221 through E-223
1961	Star	E-283 and E-284
1961	Wakefield	B-183 and B-184
1961	Rutland	B-1 through B-3
1961	Rutland	B-11 and B-12
1961	Rutland	B-14 through B-16
1961	Rutland	B-23 and B-24
1961	Rutland	B-101 through B-104, B-111
1961	Oxford	B-4 through B-10
1961	Oxford	B-17 through B-22
1961	Waltham	B-25 through B-28
1961	Brockton	B-130 through B-132
1961	Albans	B-140 through B-145
1961	Newton	B-180 and B-182

Year	Model Name	Model Number
1961	Andover	A-31 through A-36
1961	Bradford	BF-42
1961	Lynnfield	L-51 and L-52
1961	Lynnfield	L-153 through L-158
1961	Brookline	BR-61 through BR-64
1961	Brookline	BR-165 through BR-170
1961	Melrose	M-71 through M-74
1962	Rutland	B-1 through B-3
1962	Rutland	B-11 through B-13, B-24
1962	Rutland	B-101 through B-104
1962	Rutland	B-111, B-502
1962	Oxford	B-4 through B-7, B-20
1962	Waltham	B-25, B-26, B-28
1962	Lynnfield	L-51, L-52, L-153 through L-158
1962	Brockton	B-130 through B-132
1962	Albans	B-143 through B-145
1962	Newton	B-180 through B-182
1962	Wakefield	B-183 and B-184
1962	The Star	E-201 through E-203
1962	The Star	E-211 through E-213
1962	The Star	E-221 through E-223
1962	Sudbury	E-283 and E-284
1962	Cambridge	B-301 through B-303
1962	Lexington	B-401 through B-403
1962	Town House	——
1962	Town House	E-225
1962	Town House	B-801
1962	Town House	B-504
1962	Town House	B-802
1962	Town House	B-803
1962	Town House	E-905

12a. As to each such model, state whether or not plans, specifications and a list of the components which make up each such model are available. If so, give the name, business

address and position of the person or persons in charge of such documents.

Plans are available only for those models offered during the current year. Specifications and lists of components are covered by package descriptions included in each year's Product Manual. Edward L. Akers, Jr., Manager-Customer Service, United States Steel Homes Division, United States Steel Corporation, 2549 Charlestown Road, New Albany, Indiana, has custody of the Product Manuals for 1960, 1961 and 1962, and the plans for the models offered in 1962.

12b. As to each such model, give the selling price of the United States Steel Corporation, or its division which sells same.

The price charged for each model by United States Steel Homes Division depends upon which of several treatments is selected by the dealer and which additions to the Basic Home Package are selected by the dealer. Accordingly, it would be impossible to answer Interrogatory 12b as it is presently worded. The prices of each treatment and of the various optional additions for each Basic Home Package are set forth in price lists which are in the Product Manuals of United States Steel Homes Division for 1960, 1961 and 1962. A copy of each such price list is available for inspection and copying by plaintiff in the office of Albert F. Reutlinger, Middleton, Seelbach, Wolford, Willis & Cochran, 501 South Second Street, Louisville 2, Kentucky, counsel for United States Steel Corporation.

14. Name the person in charge of the New Albany plant of the United States Steel Homes Division, United States Steel Corporation.

George L. Dannenfelser, Plant Superintendent, United States Steel Homes Division.

15. Identify all persons who solicited or handled sales of United States Steel Homes or component parts for prefabricated houses in the Jefferson County, Kentucky area in 1960, 1961 and 1962 by giving their names, business

addresses and positions with United States Steel Corporation or its divisions.

Name	Present Position (all with U. S. Steel Homes Division)
Harry R. Black	Vice President - Sales
Stanley J. Mack	Manager - Dealer Sales
Andrew Cowart	Assistant to Vice President - Sales
Neil G. Day	Sales Development Representative
Paul B. Grayson	Sales Representative
George W. Rosenbarger	Manager - Order Service
Edward L. Akers, Jr.	Manager - Customer Service
Charles L. Schultz	Manager - Product Service
Meredith R. Moreillon	Sales Representative
Arthur E. Harris	Product Service Representative (Employment terminated on April 23, 1962)

The present business address of all the aforesaid persons, except Arthur E. Harris, is United States Steel Homes Division, United States Steel Corporation, 2549 Charlestown Road, New Albany, Indiana. The present business address of Arthur E. Harris is not known.

16. Were the persons or any of them identified in response to Interrogatory 15 furnished with Sales Manuals, bulletins, letters, memoranda or other documents concerning the methods to be employed by them in selling United States Steel Homes or component parts for prefabricated houses?

Yes.

18. Identify each officer or employee of United States Steel Corporation or its divisions who has had any direct

dealings with Fortner Enterprises, Inc. concerning United States Steel Homes or component parts for prefabricated houses by giving their names, business addresses and positions with the company.

The following officers and employees of United States Steel Corporation or its divisions, all of whom are officers or employees of United States Steel Homes Division, have had direct dealings with Fortner Enterprises, Inc. concerning United States Steel Homes or component parts for prefabricated houses:

Name	Position with United States Steel Homes Division
David H. Boyd	President
Harry R. Black	Vice President - Sales
Stanley J. Mack	Manager - Dealer Sales
Andrew Cowart	Assistant to Vice President - Sales
Neil G. Day	Sales Development Representative
Paul B. Grayson	Sales Representative
George W. Rosenbarger	Manager - Order Service
Edward L. Akers, Jr.	Manager - Customer Service
Charles L. Schultz	Manager - Product Service
Meredith R. Moreillon	Sales Representative
Robert W. Lane	Coordinator - Sales Service
Frank J. Colson	Chief Development Engineer
Reginald B. Wilmer	Products Engineer
Orrin E. Barnum	Treasurer
William L. Lieber	Assistant Treasurer
Jacob H. Kestner	Credit Manager
George L. Dannenfelser	Plant Superintendent
J. Robert Thomas	Director - Quality Control
Derrel E. Longest	Director of Purchases

The business address of each of the aforesaid persons, except Orrin E. Barnum, is 2549 Charlestown Road, New Albany, Indiana. The business address of Orrin E. Barnum is 525 William Penn Place, Pittsburgh 30, Pennsylvania.

9. Identify every officer or employee of United States Steel Corporation or its divisions who has passed upon or made decisions concerning dealings with Fortner Enterprises, Inc., to the extent said officers and employees are not identified in response to Interrogatory 18, by giving their names, business addresses, and positions with the company.

William H. Lang, Treasurer of United States Steel Corporation and President and Treasurer of U. S. Steel Homes Credit Corporation, passed upon or made decisions concerning dealings with Fortner Enterprises, Inc., but in his capacity of President and Treasurer of U. S. Steel Homes Credit Corporation. His business address is 71 Broadway, New York 6, New York.

20. Does United States Steel Corporation or its divisions have possession of 1960, 1961 and/or 1962 price lists for prefabricated houses or for component parts for prefabricated houses issued or published by or on behalf of any of its competitors? If so, identify ~~each by~~ giving:

Yes.

20a. The name of the competitor.

20b. The date issued, released, or otherwise appearing thereon.

20a. The name of the competitor.

control over each such price list, his business address and position with the company.

Name of Competitor	Date	Person Having Custody of Price Lists
Alside Homes Corporation	Nov. 1961	H. R. Black
General Homes, Division of General Industries, Inc.	10-15-61	H. R. Black
National Homes Corp.	Undated (4 price lists)	H. R. Black
	9-10-60 (12 price lists)	H. R. Black
	11-1-60 (4 price lists)	H. R. Black
	12-20-60	H. R. Black
	6-8-61	S. J. Mack
	6-10-61	S. J. Mack
Pease Woodwork Co.	1961	G. W. Rosenbarger
	1960	G. W. Rosenbarger

H. R. Black is Vice President - Sales, United States Steel Homes Division; S. J. Mack is Manager - Dealer Sales, United States Steel Homes Division; and G. W. Rosenbarger is Manager - Order Service, United States Steel Homes Division. The business address of each of these persons is 2549 Charlestown Road, New Albany, Indiana.

21. State the name, business address and position with the company of the person who has charge of or control of the minute books of United States Steel Corporation.

Benjamin L. Rawlins, Secretary, United States Steel Corporation, 71 Broadway, New York 6, New York.

/s/ Harry R. Black

ATTACHMENT TO ANSWER TO INTERROGATORIES 6a AND 6b

Statistics in possession of United States Steel Homes Division, 2549 Charlestown Road, New Albany, Indiana.

Answers to Interrogatories on Behalf of U. S. Steel Corp.

Title and (By Whom Prepared or Issued)	Date	No. of Pages
(1) Construction Reports—Construction Activity (Issued by Bureau of Census, U. S. Dept. of Commerce)	May, 1961	4
	August, 1961	4
	February, 1962	8
	April, 1962	4
	May, 1962	4
	June, 1962	5
(2) Construction Reports—Housing Starts (Issued by Bureau of Census, U. S. Dept. of Commerce)	February, 1962	4
	March, 1962	4
	April, 1962	4
	May, 1962	4
	June, 1962	4
	July, 1962	4
(3) Construction Reports—Housing Sales (Issued by Bureau of Census, U. S. Dept. of Commerce)	July, 1962	6
(4) Press Release entitled "Housing Starts in May 1962" (Issued by Bureau of Census, U. S. Dept. of Commerce)	June 18, 1962	2
(5) Monthly Locality Report on FHA Operations under Section 221 (Issued by Federal Housing Administration)	Through Dec. 31, 1961	6
	Through Nov. 30, 1961	6
	Through Aug. 31, 1961	6
(6) Survey of New Building—Chicago Metropolitan Area (Issued by Bell Savings and Loan Ass'n, Chicago)	May 18, 1962	4
	March 16, 1962	4
	February 16, 1962	4
(7) Building Business (Issued by F. W. Dodge Corp., New York)	October, 1962	4
	February, 1962	4
(8) Economic News Notes (Issued by National Association of Home Builders)	July 16, 1962	3
	June 19, 1962	3
	June 7, 1962	9
	May 18, 1962	2
	April 24, 1962	8
	April 18, 1962	2
	February 19, 1962	4
	February 15, 1962	8

Title and (By Whom Prepared or Issued)	Date	No. of Pages
(9) Survey Report (Issued by National Association of Home Builders)	June, 1960	28
(10) Housing Statistics (Issued by Housing and Home Finance Agency, Washington, D. C.)	December, 1958	233
(11) Factors affecting the outlook for real estate in 1962 (Issued by Roy Wenzlick Research Corp.)	Undated	2
(12) Washington Letter (Issued by National Association of Home Builders)	July 19, 1962	4
(13) Builder Market Trends (Issued by Practical Builder)	1962	4
(14) Total U. S. Single Family Housing Trends — Manufactured Homes vs. Total Starts (Issued by Manufactured Homes)	May, 1962	1
(15) A Fact Book on Home Manufacturing (Issued by Home Manufacturers Association)	March 15, 1962	26
(16) Midwest Housing Markets (Issued by Advance Mortgage Corp.)	4th quarter 1961 3rd quarter 1961 2nd quarter 1961	24 24 24
(17) News Service (Issued by Home Manufacturers Association)	April 23, 1962	4
(18) Sales by Territory & Dealer (Prepared by W. E. Lewellen, Comptroller, United States Steel Homes Division)	December 1959 — December 1961 and June 1962	Average of ten pages each

Title and (By Whom Prepared or Issued)	Date	No. of Pages
(19) United States Steel Homes Division Unit Shipment Statistics (Prepared by W. E. Lewellen, Comptroller, United States Steel Homes Division)	December 1959 — December 1961 and June 1962	4, 6, 8, and 20 pages, respectively

Statistics in possession of United States Steel Corporation, 525 William Penn Place, Pittsburgh 30, Pa.

(20) Savings and Loan Fact Book (Prepared by Homes Savings and Loan League)	1962	127
(21) Construction Reports — Housing Starts (Issued by Bureau of Census, U. S. Dept. of Commerce)	Monthly, Dec. 1959 to May, 1962, inclusive	Average of 4 pages per report
(22) Construction Review (Issued by Business and Defense Services Administration, U. S. Dept. of Commerce)	Monthly, Jan. 1957 to June, 1962, inclusive	41 - 71 pages per report

Items (1) - (14) are in the custody of S. J. Mack, Manager-Dealer Sales, United States Steel Homes Division. Items (15) - (17) are in the custody of H. R. Black, Vice President-Sales, United States Steel Homes Division. Items (18) and (19) are in the custody of W. E. Lewellen, Comptroller, United States Steel Homes Division. Items (20) through (22) are in the custody of H. M. Ridlen, Director, Commercial Research, United States Steel Corporation.

ANSWERS TO INTERROGATORIES ON BEHALF OF U. S. STEEL HOMES CREDIT CORPORATION.

Affiant, after being duly sworn, states that his name is Richard C. Dyas, that he is Vice President and General Manager of U. S. Steel Homes Credit Corporation and that the following answers to certain interrogatories pro-

pounded to U. S. Steel Homs Credit Corporation are true to the best of his information and belief.

1. What date was U. S. Steel Homes Credit Corporation incorporated?

U. S. Steel Homes Credit Corporation was incorporated on January 29, 1954.

2. For each of the years 1960, 1961 and 1962 identify each officer and director of U. S. Steel Homes Credit Corporation by giving their names, title and office addresses.

The directors and officers of U. S. Steel Homes Credit Corporation during the period January 1, 1960 to date, and their office addresses, are as follows:

DIRECTORS:

Roger M. Blough
Richard C. Dyas (from 3-3-60)
William H. Lang
Robert C. Tyson
Leslie B. Worthington (from 3-3-60)

The office address of each of the aforementioned directors is 71 Broadway, New York 6, New York.

OFFICERS:

Chairman of Board
Robert C. Tyson, 71 Broadway, New York 6, New York
President and Treasurer
William H. Lang, 71 Broadway, New York 6, New York
Vice President and General Manager
Richard C. Dyas, 71 Broadway, New York 6, New York
Secretary
Benjamin L. Rawlins, 71 Broadway, New York 6, New York
Comptroller
William S. Gardner, 71 Broadway, New York 6, New York

Answers to Interrogatories on Behalf of U. S. Steel Corp.

Assistant Treasurer

William E. Riddiford, 71 Broadway, New York 6, New York

Assistant Secretaries

William L. Rollins, 322 Pearl Street, New Albany, Indiana

John C. Bird, 525 William Penn Place, Pittsburgh 30, Pennsylvania

3. State whether or not U. S. Steel Homes Credit Corporation has in its possession any statistics concerning the sale or manufacture of prefabricated homes or their component parts by any seller or manufacturer in the United States as a whole or any portion or portions thereof for the years 1957 through 1962. If so:

Yes.

3a. Identify each such set of statistics by giving the date, title, number of pages, person or organization which prepared or under whose auspices the statistics were prepared and the location of each such set of statistics.

The published annual reports of National Homes Corporation for the years 1958 and 1959, containing 33 numbered pages and 28 numbered pages, respectively, and the published semi-annual reports of National Homes Corporation, dated June 30, 1958, June 30, 1960, and June 30, 1962, each of which contains eight pages.

3b. Identify for each set of statistics the person or persons who have charge of or control over such statistics by giving their names, positions and business addresses.

Richard C. Dyas, Vice President and General Manager, U. S. Steel Homes Credit Corporation, 71 Broadway, New York 6, New York.

4. For each of the years 1957 through 1962 did U. S. Steel Homes Credit Corporation submit statistics to the United States Government or any of its various departments, agencies or bureaus or to the United States Congress or any of its committees or sub-committees which

concerned the loans made by it for the purpose of financing the development of real estate and/or the sale or purchase of prefabricated homes or component parts for prefabricated houses? If so:

Yes, for each of the years 1957 through 1961. No, for the year 1962.

4a. Identify each such report including therein the date of the report, the governmental body to whom it was submitted, the title of the report and the period of time covered by each such report.

For each of the years 1957 through 1961, U. S. Steel Homes Credit Corporation submitted to the Federal Housing Administration and to the Federal National Mortgage Association its audited financial statements, dated December 31, 1957, December 31, 1958, December 31, 1959, December 31, 1960, and December 31, 1961, covering respectively the calendar years 1957-1961, inclusive.

4b. As to each such report, state whether or not a copy was retained by U. S. Steel Homes Credit Corporation.

Yes.

4c. If such reports were retained, identify their location and the person or persons having control of or charge of such documents by giving their names, business addresses and positions.

A copy of each such report is located at the office of, and is in the custody of, Richard C. Dyas, Vice President and General Manager, U. S. Steel Homes Credit Corporation, 71 Broadway, New York 6, New York.

6. Separately for each of the years 1960 through 1962 give the following:

a. The name and address of each person or company doing business in Jefferson County, Kentucky to whom loans were made by U. S. Steel Homes Credit Corporation for the purpose of the development of real estate, for the purchase or sale of United States Steel Homes or component parts for prefabricated houses.

b. For each of the persons or companies named in Interrogatory 6a above, state the amount of the aggregate of the loans outstanding for each of the years 1960 through 1962.

For each of the years 1960, 1961, and for 1962 to October 29, 1962, the companies doing business in Jefferson County, Kentucky, to which U. S. Steel Homes Credit Corporation made loans for the development of land and/or the construction of United States Steel Homes, and the amount of the unpaid principal balance of the loans to such companies as of December 31, 1960, December 31, 1961, and October 29, 1962, are as follows:

Borrower	Unpaid Principal Balance As of 12-31-60	As of 12-31-61	As of 10-29-62
A. W. Brent Co. Center Building Louisville, Ky.	$ 11,600.00	—0—	—0—
Dorsey Development Corp. 1112 East Broadway Louisville, Ky.	$133,277.00	$333,684.77	$218,355.00
Fortner Enterprises, Inc. 4123 So. Third St. Louisville, Ky.	$198,909.06	$428,854.40	$285,649.60
Eagles Company 4406 Shelbyville Rd. Louisville, Ky.	—0—	—0—	$ 81,240.34

9. Identify all persons who have solicited or handled the granting of financing of real estate, prefabricated homes or component parts thereof in the Jefferson County, Kentucky area in each of the years 1960, 1961 and 1962 by giving their names, business addresses and positions with U. S. Steel Homes Credit Corporation.

In each of the years 1960, 1961 and 1962, the following employees of U. S. Steel Homes Credit Corporation have participated in the consideration of applications for loans filed with it by dealers and/or prospective dealers of United States Steel Homes in Jefferson County, Kentucky:

William H. Lang, Richard C. Dyas, William L. Rollins, and William J. Leonard. The business addresses and positions with U. S. Steel Homes Credit Corporation of these persons is set forth in the answer to Interrogatory No. 1 above.

10. Were the persons or any of them identified in response to Interrogatory No. 9 furnished with Manuals, bulletins, letters, memoranda or other documents concerning the methods to be employed by them in offering the financing services of U. S. Steel Homes Credit Corporation?

a. If so, identify each such Manual, bulletin, letter, memorandum or other document by giving its title, author, data, person or persons to whom addressed, and the name, business address and position with company of the person who has each such document in his custody, control or possession.

b. If not, state whether oral directions were given the persons who solicited or handled the offering of the financing services of U. S. Steel Homes Credit Corporation as to the methods to be employed by them in offering such services? Identify the person or persons who gave such oral directions by giving their names, business addresses and positions with the company.

No. U. S. Steel Homes Credit Corporation does not offer its financing services to anyone. It considers only those loan applications which it receives from applicants who have been franchised as dealers of United States Steel Homes by United States Steel Homes Division or who have applied for such a franchise. Accordingly, it has issued no instructions, either written or oral, concerning the methods to be employed in offering its financing services.

11. Identify each officer or employee of U. S. Steel Homes Credit Corporation who has had any direct dealings with Fortner Enterprises, Inc. concerning United States Steel Homes or component parts for prefabricated houses by giving their names, business addresses and positions with the company.

Answers to Interrogatories on Behalf of U. S. Steel Corp.

The following officers and employees of U. S. Steel Homes Credit Corporation have had direct dealings with Fortner Enterprises, Inc., concerning the loans made to it by U. S. Steel Homes Credit Corporation for the purpose of acquiring and developing land on which United States Steel Homes would be constructed, and for the construction of such homes: Richard C. Dyas, William L. Rollins and William J. Leonard. The business addresses and positions with U. S. Steel Homes Credit Corporation of said persons are set forth in the answer to Interrogatory No. 1 above.

12. Identify every officer or employee of U. S. Steel Homes Credit Corporation who has passed upon or made decisions concerning dealings with Fortner Enterprises, Inc., to the extent said officers and employees are not identified in response to Interrogatory No. 11, by giving their names, business addresses and positions with the company.

William H. Lang, President and Treasurer, U. S. Steel Homes Credit Corporation, 71 Broadway, New York 6, New York.

13. Does U. S. Steel Homes Credit Corporation have possession of any 1960, 1961 and/or 1962 price list for prefabricated houses or for component parts for prefabricated houses issued or published by or on behalf of any of its competitors? If so, identify each by giving:

a. The name of the competitor.

b. The date each price list was issued, released, or otherwise appearing thereon.

c. The name of the person having charge of or control over such price list, has business address and position with the company.

U. S. Steel Homes Credit Corporation has no price lists for prefabricated houses or for component parts for prefabricated houses, issued or published by or on behalf of the competitors of United States Steel Homes Division.

Answers to Interrogatories on Behalf of U. S. Steel Corp.

15. State the name, business address and position with company of the person who has charge of or control of the minute books of U. S. Steel Homes Credit Corporation.

Benjamin L. Rawlins, Secretary, 71 Broadway, New York 6, New York.

16. State whether or not any loans have been made by U. S. Steel Homes Credit Corporation for any purpose other than the financing of the development of real estate for subdivision purposes or for the purpose of financing the purchase by others of United States Steel Homes or component parts for prefabricated houses. If the answer to the foregoing Interrogatory is in the affirmative, state:

a. The name and address of each person or company to whom such other loans were made.

b. The amount of each loan.

c. The date of each loan.

d. The purpose of each loan.

e. The terms and conditions under which each such loan was made.

No. Loans are made by U. S. Steel Homes Credit Corporation exclusively for the purpose of financing the construction of houses utilizing products of United States Steel Homes Division and, in order to make it possible for franchised dealers of United States Steel Homes Division to construct such houses, the Credit Corporation will also furnish financing to enable the borrower to acquire unimproved real estate to be held for future subdivision development, or to acquire presently subdivided real estate, or to improve and develop real estate as subdivisions, or to provide general working capital for such borrower.

17. State whether or not any loans have been made by U. S. Steel Homes Credit Corporation which did not have as a condition precedent to such loan the requirement that United States Steel Homes or component parts for prefabricated houses manufactured by United States Steel

Corporation be purchased by the borrower in developing real estate for subdivision purposes. If the answer to the foregoing Interrogatory is in the affirmative, state:

The prime objective of all loans made by U. S. Steel Homes Credit Corporation is, and has been, to make possible the sale and distribution of products of United States Steel Homes Division by and through that Division's duly franchised dealers, and all such loans are made upon conditions appropriate to the transaction which are designed to accomplish their objective, so far as may be practicable. The Credit Corporation's business is directed solely toward assisting in accomplishing this objective; it transacts no business whatever with the general public.

Loans made to finance the acquisition of unimproved real estate to be held for future subdivision purposes are made against mortgage security with no provisions for partial releases, so that all of the real estate may be available as prime security for the Credit Corporation's loan as long as it is outstanding.

Loans made to finance the acquisition of subdivided real estate, or to finance the development of real estate as subdivisions, are made against mortgage security with provisions for partial releases of individual building lots upon satisfactory evidence that the lot has been improved with a residential structure utilizing products of United States Steel Homes Division, or upon satisfactory assurances that the lot is to be so improved.

In instances in which the borrower is a new dealer which has not established a reputation for reliability, an additional note (non-interest bearing) in a negotiated amount is sometimes required, the proceeds of which are held as cash collateral to assure compliance with the borrower's undertaking to devote the mortgaged property to the construction of houses utilizing products of United States Steel Homes Division until the loan is retired.

Loans made to finance the construction of houses are conditioned directly upon the disbursement of proceeds

solely for payment of costs of construction of a structure utilizing products of the United States Steel Homes Division. Loans to provide general working capital are occasionally made to established dealers of the United States Steel Homes Division, and are made for short terms only.

In connection with all loans made by the Credit Corporation, the borrower may at any time terminate its obligation to utilize products of the United States Steel Homes Division simply by retirement of the loan. No such loan seeks to impose any continuing requirement to utilize such products after the loan is retired, or to utilize such products in any undertaking not related to the property which has been acquired, developed or improved with the proceeds of the loan.

/s/ Richard C. Dyas

SECOND AMENDED COUNTERCLAIM.

U. S. Steel Homes Credit Corporation for a second amendment to its counterclaim against the plaintiff states:

1. Heretofore on or about October 28, 1960, plaintiff executed and delivered to U. S. Steel Homes Credit Corporation its three promissory notes, each dated October 28, 1960 and further described below:

(a) One note mentioned above is in the face amount of $231,920 and bears interest at the rate of 6% per annum on the unpaid balance thereof. After certain advances by U. S. Steel Homes Credit Corporation and partial repayment by the plaintiff, there is presently outstanding on this note an unpaid balance of $163,357.60. As of September 21, 1962, this note had accrued interest charges of $4,592.06 and thereafter the daily accrual of interest to February 15, 1963 was $27.59. From and after February 15, 1963 the daily accrual of interest is $27.22. A photostatic copy of said notes was filed with the original counterclaim as a part thereof marked for reference "Land Note Number 2, 1960."

(b) The second note mentioned above is in the face amount of $373,200 and bears interest at the rate of 6% per annum on the unpaid balance thereof. After certain advances by U. S. Steel Homes Credit Corporation and partial repayment by the plaintiff, there is presently outstanding on this note an unpaid balance of $17,158.50. As of February 15, 1963, this note had accrued interest charges of $1,143.22 and thereafter the daily accrual of interest is $2.86. A photostatic copy of said note was filed with the original counterclaim as a part thereof marked for reference "Construction Note Number 1, 1960."

(c) Repeats the allegations made in Paragraph 2(c) of the first amendment to the counterclaim.

2. Repeats the allegations made in Paragraph 2 of the first amendment to the counterclaim.

3. Repeats the allegations made in Paragraph 3 of the original counterclaim and the first amendment thereto, except that it now further deletes any reference therein to Lot 477, Golden Meadows Subdivision, Section 1-D, a part of Parcel 6.

4. Repeats the allegations made in Paragraph 4 of the first amendment to the counterclaim.

5. In accordance with the terms of the notes and mortgage mentioned in Paragraphs 1 and 2 above, plaintiff is now indebted to U. S. Steel Homes Credit Corporation by way of principal and aggregate sum of $222,055.60, together with appropriate interest thereon. Some of this principal and interest according to the terms of said notes and mortgage is now immediately due and payable. Despite request therefor, such has not been paid. In accordance with the precipitation clause in said notes and mortgage, U. S. Steel Homes Credit Corporation now elects to declare plaintiff's entire indebtedness in the aggregate sum of $222,055.60 immediately due and payable, together with accrued interest in the amount of $6,193.09 to September 21, 1962 on a portion of the debt and accrued interest in the amount of

$1,143.22 to February 15, 1963 on another portion of the debt, with a daily accrual of $34.51 from September 21, 1962 to February 15, 1963 and thereafter in the amount of $37.00, until paid.

6. Repeats the allegations made in Paragraph 6 of the first amendment to the counterclaim.

7. Repeats the allegations made in Paragraphs 7, 7(a) 7(b), 8, 9, 10, 11 and 12 of the first amendment to the counterclaim.

WHEREFORE, the defendants, and each of them, pray the complaint against them be dismissed. The defendant, U. S. Steel Homes Credit Corporation, prays for judgment against the plaintiff in the amount of $283,876.12, representing principal in the amount of $275,205.60 and accrued interest in the amount of $8,670.52 and for a judgment of daily accrual of interest in the amount of $43.37 from and after September 21, 1962 to February 15, 1963 and thereafter in the amount of $45.86, until paid, that it have a lien prior and superior to all other liens on said real property presently encumbered by the two mortgages mentioned in the Counterclaim, that the liens of U S. Steel Homes Credit Corporation be enforced and the said real property to which those respective liens attach be sold by order of this court free and clear of all liens and claims, except easements and restrictions of record, and taxes not yet due and payable and the proceeds thereof be applied toward payment of the U. S. Steel Homes Credit Corporation's judgment aaginst plaintiff. The defendants, and each of them, further pray for their costs herein expended and for all other relief to which they may appear to be entitled.

/s/ Albert F. Reutlinger

REPLY TO SECOND AMENDED COUNTERCLAIM OF U. S. STEEL HOMES CREDIT CORPORATION.

Plaintiff, Fortner Enterprises, Inc., for its reply to the second amended counterclaim of the defendant, U. S. Steel Homes Credit Corporation, states:

1. Plaintiff admits the execution and delivery of the three notes which are the subject of Paragraph 1 of the second amended counterclaim and denies each and every other allegation in Paragraph 1 of the second amended counterclaim.

2. Plaintiff admits the allegations of Paragraphs 2 and 3 of the second amended counterclaim.

3. Plaintiff states that it has insufficient information to form a belief as to Paragraph 4 of the second amended counterclaim and therefore denies same.

4. Plaintiff denies the allegations of Paragraph 5 of the second amended counterclaim.

5. Plaintiff admits the execution and delivery of the two notes which are the subject of Paragraph 7 of the second amended counterclaim and denies each and every other allegation in Paragraph 7 of the second amended counterclaim.

6. Plaintiff admits the allegations of Paragraph 8 and 9 of the second amended counterclaim.

7. Plaintiff states that it has insufficient information to form a belief as to Paragraph 10 of the second amended counterclaim and therefore denies same.

8. Plaintiff denies the allegations of Paragraph 11 of the second amended counterclaim.

9. Plaintiff admits the execution and delivery of the various notes and mortgages as described in the defendant's counterclaim, but states that the plaintiff's failure to pay said notes which are allegedly due as of the date of its Complaint and its present inability to pay the said notes now allegedly due and owing is directly attributable to and is the direct result of the illegal conduct of the de-

fendants, United States Steel Corporation and U. S. Steel Homes Credit Corporation.

10. Plaintiff states that the defendants have refused to allow the plaintiff to purchase and/or build other homes than United States Steel Homes in its subdivision and as a direct result of said illegal conduct and the illegal conduct as set forth in plaintiff's Complaint filed herein, the plaintiff has been prohibited and rendered unable to perform and to pay the notes as set forth in defendant's counterclaim.

11. Plaintiff, on the grounds set forth above, denies that there is presently due and owing any sums to the defendant, U. S. Steel Homes Credit Corporation, and denies each and every other allegation of the defendant's counterclaim.

WHEREFORE, having fully answered, plaintiff demands:

1. Judgment as prayed in its original Complaint;
2. That the counterclaim of U. S. Steel Homes Credit Corporation be dismissed;
3. Its costs herein expended;
4. All other proper relief to which it may appear entitled.

/s/ Kenneth L. Anderson
/s/ A. Scott Hamilton

MOTION TO REQUIRE A SEPARATE TRIAL OF THE ANTI-TRUST ASPECTS OF THIS LITIGATION FROM THE MORTGAGE NOTE FORECLOSURE AS SET FORTH IN THE COUNTERCLAIM.

Comes the defendant, U. S. Steel Homes Credit Corporation, by counsel, and moves the court enter an order separating trial of the issues presented by the complaint and the answer thereto from the issues presented in its counterclaim (and as amended) and the reply (and as amended) thereto.

/s/ Albert F. Reutlinger

MOTION TO OVERRULE U. S. STEEL HOMES CREDIT CORPORATION'S MOTION TO SEPARATE THE ANTI-TRUST ASPECTS OF THIS CASE FROM THE FORECLOSURE ASPECTS.

Comes the plaintiff, Fortner Enterprises, Inc., by counsel, and moves the Court to overrule the motion of U. S. Steel Homes Credit Corporation to separate the Antitrust aspects of this case from the foreclosure aspects.

/s/ Kenneth L. Anderson

PRE-TRIAL ORDER NUMBER 1.

Motion having been made by U. S. Steel Homes Credit Corporation to strike Paragraph 9, 10 and 11 of the reply to the amended counterclaim and to strike the same numbered paragraphs of the reply to the second amended counterclaim and motion having been made by the plaintiff to overrule said motion to strike the designated portion of the replies; motion having been made by U. S. Steel Homes Credit Corporation to separate trial of the mortgage debt collection and foreclosure from the anti-trust aspects of the within action and a motion having been made by the plaintiff to overrule said motion; motion having been made by both defendants to separate trial of the liability issue from trial of the damage issue in the anti-trust aspect of the within action and a motion to overrule said joint motion having been made by the plaintiff; and the court having heard arguments of counsel on the matter and being sufficiently advised,

NOW, THEREFORE, IT IS CONSIDERED AND ORDERED:

1. Motion of U. S. Steel Homes Credit Corporation to strike Paragraphs 9, 10 and 11 of the reply to the amended counterclaim and the same numbered paragraphs in the reply to the seconded amended counterclaim is sustained and said pleadings are ordered stricken from the record.

2. Plaintiff's motion to overrule said motion to strike the above mentioned paragraphs from the replies is overruled.

3. The motion to separate trial of the issues presented in the counterclaim (and as amended) of U. S. Steel Homes Credit Corporation from trial of the issues created by the complaint is sustained and plaintiff's motion to overrule said motion is overruled. From and after the entry of this order, all matters pertaining to the counterclaim (collection of mortgage debt and foreclosure) shall be considered separate and apart from any of the anti-trust aspects of the within action, except that this does not prevent plaintiff from tendering, subject to admissability, evidence of the foreclosure aspect of the matter in any trial of the anti-trust aspects of the case. Separate rulings, motions, orders, pleadings, interrogatories, etc., shall be made and entered therein and all further proceedings shall be designated by the Number of 4392-A and no further reference shall be made to the United States Steel Corporation in the style thereof.

4. The joint motion of the defendants to separate trial of the issue of liability from trial of the issue of damages in the anti-trust aspect of the within action is overruled and the plaintiff's motion to overrule said joint motion of the defendants is sustained.

/s/ Roy M. Shelbourne
Judge

ANSWERS TO INTERROGATORIES ON BEHALF OF UNITED STATES STEEL CORPORATION.

Affiant, after being duly sworn, states that his name is Harry R. Black, that he is Vice President-Operations of United States Steel Corporation (Homes Division) and that the following answers to certain interrogatories propounded to United States Steel Corporation are true to the best of his information and belief.

Answers to Interrogatories on Behalf of U. S. Steel Corp.

8. Separately for each of the years 1957 through 1962 give the following:

a. Each State in which United States Steel Corporation or any of its divisions sold component parts for prefabricated homes.

b. For each such State give the dollar volume of sales of component parts for prefabricated homes and prefabricated homes.

c. For each such State give the number of packages of component parts for prefabricated homes sold.

For each of the years 1957 through 1962 (to September 30), each state to which United States Steel Homes Division, United States Steel Corporation shipped home packages, the dollar volume of such shipments to each such state, and the number of home packages shipped to each such state are set forth in the attached list marked "Attachment to Answer to Interrogatories 8a, 8b and 8c."

9. Separately for each of the years 1957 through 1962 give the following:

b. The dollar volume of sales of prefabricated houses and component parts for prefabricated houses sold in Jefferson County, Kentucky.

For each of the years 1957 through 1962 (to September 30) the dollar amount of United States Steel Homes Division's shipments of home packages to Jefferson County, Kentucky were as follows:

Year	Amount
1957	$ 60,178
1958	12,277
1959	—0—
1960	28,567
1961	262,959
1962 (to September 30)	237,333

9. Separately for each of the years 1957 through 1962 give the following:

c. The name and address of each individual or organization to whom prefabricated houses or component parts for prefabricated houses were sold in Jefferson County, Kentucky.

(1) Give the number of packages of component parts for prefabricated houses, and prefabricated houses, sold to each such person or organization.

(2) Give the dollar value of sales of prefabricated houses or component parts for prefabricated houses sold to each such person or organization.

For each of the years 1957 through 1962 (to September 30), the name and address of each individual or organization in Jefferson County, Kentucky to whom home packages were sold by United States Steel Homes Division, United States Steel Corporation, the number of packages sold to each, and the dollar volume of such sales, are set forth in the attached list marked "Attachment to Answer to Interrogatories 9c, 9c(1) and 9c(2)."

10. Identify, by giving the following information as to each, all letters, memoranda, or other documents or copies thereof whether sent or received now in the files of United States Steel Corporation and/or its divisions which mention or are concerned with the plaintiff, Fortner Enterprises, Inc.:

a. Date
b. Author
c. Person or persons to whom addressed
d. The place where located
e. The person who has charge of such documents, his business address and position.
f. Whether a letter, memorandum, or other type document.

United States Steel Corporation by its agent, the affiant herein, certifies that material heretofore furnished plaintiff's attorneys for inspection and copying comprise all such material furnishing the basis for the information re-

quested in this Interrogatory 10, including all of its subdivisions.

13. Did United States Steel Corporation and/or its divisions in each of the years 1960, 1961 and 1962 purchase certain of the components used in its packages of component parts for prefabricated houses from other manufacturers or sellers? If so, give for each year:

a. The various component parts so purchased.

b. The models in which each was used.

c. The manufacturer from whom each was purchased.

In the years 1960, 1961 and 1962 (to September 30) United States Steel Homes Division, United States Steel Corporation, purchased from other manufacturers or sellers certain of the components included in its home packages, on which no manufacturing operations were performed by United States Steel Homes Division. Such components, and the manufacturer from whom each was purchased are set forth in the attached list marked "Attachment to Answer to Interrogatories 13, 13a, 13b and 13c." The components which are underlined on the attached list are shipped in varying quantities, based on individual model requirement, with every home package which is shipped to United States Steel Homes Division's dealers, and all of the other components are purchased by the dealer at its option.

Affiant, pursuant to the court's order regarding the objections to Interrogatories 16a and 16b, states that sales manuals, bulletins and other similar written material of general dissemination are now or upon reasonable notice to Albert F. Reutlinger are available for inspection and copying by the plaintiff in the office of Albert F. Reutlinger, 501 South Second Street, Louisville 2, Kentucky, Counsel for United States Steel Corporation.

/s/ Harry R. Black

ANSWERS TO INTERROGATORIES ON BEHALF OF U. S. STEEL HOMES CREDIT CORPORATION.

Affiant, after being duly sworn, states that his name is Richard C. Dyas, that he is Vice President and General Manager of U. S. Steel Homes Credit Corporation and that the following answers to certain interrogatories propounded to U. S. Steel Homes Credit Corporation are true to the best of his information and belief.

5. Separately for each of the years 1960 through 1962 give the following:

a. Each state in which U. S. Steel Homes Credit Corporation loaned money for the purpose of financing the development of real estate or the purchase or sale of United States Steel Homes or component parts for prefabricated homes. For each state give the total dollar volume of loans so made.

For each of the years 1960 through 1962, U. S. Steel Homes Credit Corporation entered into loan commitments with borrowers in the following States:

Alabama (1960, 1961)	New York (1960)
Illinois	Ohio
Indiana	Pennsylvania (1962)
Kentucky	Wisconsin (1960, 1962)
Minnesota (1961)	Virginia (1961, 1962)
Missouri	

5. Separately for each of the years 1960 through 1962 give the following:

b. For each such state give the name and address of every person or company to whom loans were made which in the aggregate exceeded $250,000.00.

For each of the years 1960 through 1962, the name and address of every person or company in each such state to whom loan commitments were made which in the aggregate exceeded $250,000, are as follows:

Name of Borrower	Address
Allardt Homes, Inc. (1962)	Muncie, Indiana
Andover Development Corporation (1961)	Park Forest, Illinois
Broyhill Land Corporation (1961)	Arlington, Virginia
M. T. Broyhill & Sons Corporation (1961, 1962)	Arlington, Virginia
Clifford C. Loss, Inc. (1960, 1962)	Toledo, Ohio
Cowan Builders (1960)	Hammond, Indiana
Delaware Home Builders (1960, 1962)	Delaware, Ohio
Dorsey Development Corporation (1960)	Louisville, Kentucky
Drakesboro Real Estate & Development Co., Inc. (1961)	Drakesboro, Kentucky
Eagles Company (1962)	Louisville, Kentucky
Fifth Cincinnati Builders, Inc. (1961)	Dayton, Ohio
Fortner Enterprises, Inc. (1960, 1961)	Louisville, Kentucky
Fourteenth Ohio Builders, Inc. (1962)	Dayton, Ohio
Fourth Hoosier Villas, Inc. (1960, 1962)	Dayton, Ohio
Handy Homes, Inc. (1962)	Indianapolis, Indiana
Harrison Homes, Inc. (1961)	Indianapolis, Indiana
Heritage Building Corporation (1961)	Clayton, Missouri
Highland Terrace, Inc. (1960)	Dayton, Ohio
Hillsdale Development Corporation, Inc. (1960)	Springfield, Ohio
Hoosier Builders (1960)	New Albany, Indiana

Name of Borrower	Address
Hoosier Villas, Inc. (1960)	Dayton, Ohio
Hunter Properties, Inc. (1960)	Fort Wayne, Indiana
Keele Construction Company (1962)	Kansas City, Missouri
Lakewood Manor, Inc. (1960)	Huntsville, Alabama
Midland Development Company, Inc. (1960, 1961, 1962)	Kansas City, Missouri
Ninth Meadowdale, Inc. (1960)	Dayton, Ohio
North Cincinnati Builders, Inc. (1960, 1961, 1962)	Dayton, Ohio
North Hills, Inc. (1961)	Mundelein, Illinois
Regency Homes, Inc. (1961, 1962)	Kansas City, Missouri
Richland Homes, Inc. (1962)	Ellettsville, Indiana
Sterling Park Development Corporation (1962)	Arlington, Virginia
Stoll-Myers Builders (1960)	Lexington, Kentucky
Superior Homes, Inc. (1961, 1962)	Chicago, Illinois
Terryland, Inc. (1960)	Liverpool, New York
Third Hoosier Villas, Inc. (1960, 1961)	Dayton, Ohio
Thunderbird Homes, Inc. (1962)	Cleveland, Ohio
W. Anthony Torsell, Inc. (1960)	Springfield, Ohio
Towne Realty (1962)	Milwaukee, Wisconsin
Twelfth Ohio Builders, Inc. (1961)	Dayton, Ohio
United Construction Company (1960)	Youngstown, Ohio
Valleydale Builders, Inc. (1960, 1961)	Dayton, Ohio
Valley Hi, Inc. (1960, 1961)	Dayton, Ohio
Willow Dell Builders, Inc. (1960, 1961)	Dayton, Ohio

Answers to Interrogatories—U. S. Steel Homes Credit Corp.

In accordance with the court's ruling on the objections to Interrogatory Number 7, the material giving rise to the information requested in Interrogatory Number 7, upon reasonable notice to defendant, U. S. Steel Homes Credit Corporation's counsel, Albert F. Reutlinger, will be made available to plaintiff or its attorney for inspection and copying at the New Albany office of U. S. Steel Homes Credit Corporation, 322 Pearl Street, New Albany, Indiana.

With respect to Interrogatory Number 8 and the court's ruling thereon U. S. Steel Homes Credit Corporation states that it has no form bulletins, form letters or material of general dissemination which concern themselves with sales of prefabricated homes or component parts thereof as a condition of or prerequisite to the giving of financing by U. S. Steel Homes Credit Corporation.

/s/ Richard C. Dyas

United States Steel Homes Division

SHIPMENTS OF HOME PACKAGES

ATTACHMENT TO ANSWER TO INTERROGATORIES 8a, 8b and 8c

	1957		1958		1959		1960		1961		9 Months 1962	
	Packages	Amount	Packages	Amount	Packages	Amount	Packages	Amount	Packages	Amount	Packages	Amount
Alabama	-	$ -	-	$ -	-	$ -	17	$ 64,580	8	$ 30,968	13	$ 54,537
Arkansas	-	-	-	-	-	-	-	-	1	5,329	-	-
California	-	-	1	5,167	-	-	-	-	-	-	-	-
Colorado	-	-	-	-	2	7,727	3	10,291	-	-	-	-
Connecticut	116	464,313	78	252,298	50	197,260	3	11,469	2	8,843	2	9,518
Delaware	-	-	2	7,975	-	-	-	-	1	3,878	1	3,814
Florida	1	1,500	-	-	-	-	-	-	-	-	-	-
Georgia	-	-	1	5,167	-	-	-	-	-	-	-	-
Illinois	316	1,261,759	125	402,374	31	125,024	205	760,128	43	189,604	59	217,765
Indiana	289	1,155,737	135	435,045	167	663,581	184	766,958	150	628,376	124	501,644
Iowa	149	593,132	120	385,902	37	148,684	32	133,597	52	153,184	4	19,766
Kansas	5	19,582	-	-	-	-	55	221,436	80	334,996	93	379,105
Kentucky	39	154,644	10	31,681	7	27,226	41	157,977	113	404,306	63	243,096
Maine	12	49,038	18	57,453	7	27,369	14	65,880	19	81,997	14	63,322
Maryland	9	36,898	7	23,487	3	11,750	5	18,805	7	27,890	8	38,421
Massachusetts	44	174,274	6	17,889	-	-	-	-	3	13,791	-	-
Michigan	37	149,723	36	114,949	11	45,267	7	34,505	11	46,391	4	15,690
Minnesota	3	13,439	10	31,044	-	-	82	266,851	16	60,149	8	32,247
Mississippi	-	-	1	5,167	-	-	-	-	-	-	-	-
Missouri	52	208,507	18	57,567	30	118,049	7	34,301	23	96,085	5	17,711
Montana	1	4,573	1	4,483	7	25,967	1	4,053	2	9,896	-	-
Nebraska	1	6,434	-	-	1	4,066	1	11,810	18	78,235	-	-
New Hampshire	11	43,264	9	27,466	9	37,618	8	31,540	10	53,202	1	4,385
New Jersey	26	102,252	27	92,582	5	19,270	11	73,520	12	53,445	5	22,920
New York	30	120,054	17	55,430	21	85,023	28	134,196	11	56,026	7	33,135
North Dakota	-	-	-	-	-	-	5	34,997	1	3,962	-	-
Ohio	811	3,240,369	381	1,221,436	541	1,641,735	966	3,483,295	659	2,312,492	398	1,284,083
Oklahoma	-	-	-	-	-	-	7	28,851	7	24,853	-	-
Oregon	-	-	4	11,984	-	-	-	-	-	-	-	-
Pennsylvania	141	562,641	138	445,321	32	127,172	50	167,530	58	238,993	33	135,321
South Dakota	-	-	-	-	1	3,921	17	68,651	10	33,089	2	6,845
Tennessee	-	-	-	-	-	-	21	71,130	-	-	-	-
Texas	-	-	1	5,167	-	-	-	-	-	-	-	-
Vermont	-	-	1	5,047	4	14,675	-	-	1	3,905	1	3,764
Virginia	1	3,123	23	74,159	44	176,645	-	-	-	-	136	518,776
West Virginia	60	237,905	33	106,892	28	113,140	22	86,086	20	81,701	3	14,229
Wisconsin	27	107,776	1	3,342	5	18,270	1	3,916	4	16,406	3	14,777

183a

Attachment to Answer to Interrogatories 9c, 9c(1), and 9c(2)

SALES OF HOME PACKAGES BY UNITED STATES STEEL HOMES DIVISION

TO PURCHASERS IN JEFFERSON COUNTY, KENTUCKY

	1957		1958		1959		1960		1961		Nine Mos. 1962	
	Packages	Amount	Packages	Amount	Packages	Amount	Packages	Amount	Packages	Amount	Packages	Amount
The Eagles Company 4406 Shelbyville Road Louisville, Kentucky	3	$12,630	-	-	-	-	-	-	7	$25,879	43	$167,481
Town & Country Homes 1112 E. Broadway Louisville, Kentucky	10	47,548	2	$12,261	-	-	-	-	4	18,588	5	26,439
The O. K. Company, Inc. 8515 Preston Highway Louisville, Kentucky	-	-	-	-	-	-	3	$10,423	7	29,490	-	-
Fortner Enterprises 4123 South 3rd Street Louisville, Kentucky	-	-	-	-	-	-	4	14,723	55	189,002	13	43,413
A. W. Brent Co. Center Building Louisville, Kentucky	-	-	-	-	-	-	1	3,421	-	-	-	-

Attachment to Answer to
Interrogatories 13, 13a, 13b and 13c

PURCHASED COMPONENTS FOR HOME PACKAGES

COMPONENT	MANUFACTURER 1960	1961	1962 (to September 30)
AIR CONDITIONER	- - -	- - -	General Electric Company Post Office Box 18813 Louisville 18, Kentucky
APPLIANCES	- - -	General Electric Company 410 South Third Street P. O. Box 1013 Louisville, Kentucky	General Electric Company P. O. Box 18813 Louisville, Kentucky
ASPHALT ROOF SHINGLES	Bird and Son, Inc. 9271 Manchester Road Rock Hill 17, Missouri	- - -	- - -
	The Ruberoid Company Post Office Box 1188 Joliet, Illinois	The Ruberoid Company Post Office Box 1188 Joliet, Illinois	Barrett Division Allied Chemical Corporation 3121 Euclid Avenue Cleveland, Ohio
BATH ACCESSORIES - CABINETS	F. H. Lawson Company Evans & Whateley Streets Cincinnati 4, Ohio	F. H. Lawson Company Evans & Whateley Streets Cincinnati 4, Ohio	F. H. Lawson Company Evans & Whateley Streets Cincinnati 4, Ohio
CEDAR WALL SHINGLES	Shakertown Corporation 20310 Kinsman Road Cleveland 22, Ohio	Shakertown Corporation 20310 Kinsman Road Cleveland 22, Ohio	Shakertown Corporation 20310 Kinsman Road Cleveland 22, Ohio.
CLOSET SHELVES	Air Control Products, Inc. Coopersville, Michigan	Air Control Products, Inc. Coopersville, Michigan	Air Control Products, Inc. Coopersville, Michigan

COMPONENT		MANUFACTURER 1960	1961	1962 (to September 30)
COMBINATION DOORS -	WOOD	Farley & Loetscher Manufacturing Company Dubuque, Iowa	Farley & Loetscher Manufacturing Company Dubuque, Iowa	Farley & Loetscher Manufacturing Company Dubuque, Iowa
	STEEL	- - -	The F. C. Russell Company P. O. Box 387 Pandora, Ohio	The F. C. Russell Company P. O. Box 387 Pandora, Ohio
DOORS - CLOSET		Air Control Products, Inc. Coopersville, Michigan	Air Control Products, Inc. Coopersville, Michigan	Air Control Products, Inc. Coopersville, Michigan
		American Accordion-Fold Doors, Inc. 175-35 Liberty Avenue Jamaica 33, New York	American Accordion-Fold Doors, Inc. 175-35 Liberty Avenue Jamaica, New York	American Accordion-Fold Doors, Inc. 175-35 Liberty Avenue Jamaica, New York
		Farley & Loetscher Manufacturing Company Dubuque, Iowa	Farley & Loetscher Manufacturing Company Dubuque, Iowa	Farley & Loetscher Manufacturing Company Dubuque, Iowa
			New Castle Products, Inc. Box 353 New Castle, Indiana	New Castle Products, Inc. Box 353 New Castle, Indiana
DOORS - PATIO		Chas. A. Koch Glass Company 625 East Market Street Louisville 2, Kentucky	Chas. A. Koch Glass Company 625 East Market Street Louisville 2, Kentucky	Chas. A. Koch Glass Co. 625 East Market Street Louisville 2, Kentucky
FANS - BATH		Air Control Products, Inc. Coopersville, Michigan	Air Control Products, Inc. Coopersville, Michigan	Air Control Products, Inc. Coopersville, Michigan
FLUE and HOOD		Bert R. Huncilman & Son 2072 McDonald Avenue New Albany, Indiana	Bert R. Huncilman & Son 2072 McDonald Avenue New Albany, Indiana	Bert R. Huncilman & Son 2072 McDonald Avenue New Albany, Indiana

COMPONENT	MANUFACTURER 1960	1961	1962 (to September 30)
FURNACES	General Electric Company Tyler, Texas	General Electric Company P. O. Box 1013 Louisville, Kentucky	General Electric Company P. O. Box 18813 Louisville 18, Kentucky
KITCHEN CABINETS	Youngstown Kitchens Div. of American-Standard Warren, Ohio	General Electric Company 410 South Third Street P. O. Box 1013 Louisville, Kentucky	Boro Wood Products, Inc. P. O. Box 636 Bennettsville, South Carolina H. J. Scheirich Company 250 Ottawa Avenue Louisville 9, Kentucky.
LAP SIDING - PLYWOOD	Washington Plywood Company P. O. Box 746 Everett, Washington	Walton Plywood Company, Inc. 644 East 38th Street Suite 205 Indianapolis 5, Indiana	Evans Products Company Building Materials Division P. O. Box 3295 Portland 8, Oregon
LIGHT FIXTURES	Graybar Electric Company 360 Farmington Avenue Louisville, Kentucky	Graybar Electric Company 360 Farmington Avenue Louisville, Kentucky	Graybar Electric Company 360 Farmington Avenue Louisville, Kentucky
LOCK SETS	Yale & Towne Mfg. Co. 11 South Broadway White Plains, New York	Yale & Towne Mfg. Co. 11 South Broadway White Plains, New York	Yale & Towne Mfg. Co. 11 South Broadway White Plains, New York
SHUTTERS - WOOD	Farley & Loetscher Manufacturing Company Dubuque, Iowa	Farley & Loetscher Manufacturing Company Dubuque, Iowa	Farley & Loetscher Manufacturing Company Dubuque, Iowa
STEEL	Air Control Products, Inc. Coopersville, Michigan.	- - -	- - -

COMPONENT	MANUFACTURER 1960	1961	1962 (to September 30)
VANITIES	- - -	- - -	Boro Wood Products, Inc. P. O. Box 636 Bennettsville, South Carolina
WATER HEATERS	A. O. Smith Corporation P. O. Box 28 Kankakee, Illinois	A. O. Smith Corporation P. O. Box 28 Kankakee, Illinois	A. O. Smith Corporation P. O. Box 28 Kankakee, Illinois

NOTICE.

Plaintiff, by counsel, will take notice that the defendant U. S. Steel Homes Credit Corporation at the hour of 9:30 A.M., Friday, December 20, 1963 in the within court will move the court appoint a Receiver, pursuant to Rule 66 in accordance with a form of motion and order attached hereto and will further move the court for a summary judgment, pursuant to Rule 56 in accordance with a form of judgment attached hereto relying as grounds for such summary judgment on the pleadings, interrogatories, admissions and affidavits in the record and its memorandum of authority attached hereto.

/s/ Albert F. Reutlinger

NOTICE—MOTION.

Defendant, U. S. Steel Homes Credit Corporation, will take notice that the plaintiff at the hour of 9:30 A.M., Friday, December 20, 1963 in the within Court will make the motion set forth below.

MOTION

Comes the plaintiff, by counsel, and moves the Court to overrule the defendant's motions to appoint a Receiver and for Summary Judgment on the basis of the authority already in the record and to be presented to the Court and the Affidavit attached hereto, and moves the Court to set aside its order striking Paragraphs 9, 10 and 11 of the plaintiff's reply to the amended and second amended counterclaim.

/s/ Kenneth L. Anderson
/s/ A. Scott Hamilton, Jr.

AFFIDAVIT OF A. B. FORTNER, JR.

Affiant, A. B. Fortner, Jr., after being duly sworn, deposes and states he is President of Fortner Enterprises, Inc., the plaintiff in the pending action of Fortner Enterprises, Inc. vs United States Steel Corporation et al; that prior to the filing of said action, this affiant through his

attorneys, Hamilton, Hopson & Hamilton, arranged a conference with certain officials of U. S. Steel Homes Division of United States Steel Corporation and the U. S. Steel Homes Credit Corporation in the offices of Hamilton, Hopson & Hamilton, 1015 Kentucky Home Life Building, Louisville, Kentucky; that said conference was held on the 31st day of May, 1962, and that there were present at said conference Mr. Dyas and Mr. Rollins, representing the U. S. Steel Homes Credit Corporation, Mr. Black, Mr. Mack and Mr. Boyd representing the United States Steel Homes Division of United States Steel Corporation, together with their attorney Albert F. Reutlinger. This affiant was present together with his attorneys, Henry D. Hopson and A. Scott Hamilton, Jr., representing Fortner Enterprises, Inc. Also present was Mr. Miles, the general contractor who had done considerable work in the Golden Meadows Subdivision, and Mr. Earl Smith, one of the principal salesmen handling sales of the houses in the subdivision. This conference was arranged in an effort to work out an amicable solution to the problems that were caused by the defective condition of the homes being furnished by the United States Steel Homes Division of the United States Steel Corporation. The persons who had purchased these homes were registering innumerable complaints about defective parts and the defective conditions of the homes that appeared subsequent to their taking occupancy. The dissatisfaction with these homes caused the reputation of this subdivision to deteriorate to the point that further sale of the homes furnished by the United States Steel Homes Division of the United States Steel Corporation became practically impossible. With this condition prevailing, it became apparent that Fortner Enterprises, Inc. could not continue to construct the homes furnished by the United States Steel Homes Division of the United States Steel Corporation as it was required to do under the loan agreement. These facts were fully explained to Mr. Dyas and the other gentlemen present, and our problem was fully explored with them. They were advised by Fortner Enterprises, Inc. that the project could yet be made a success

and their loan completely repaid if they would delete from the loan agreement the requirement that it was necessary to erect on each lot a prefabricated dwelling house manufactured by the United States Steel Homes Division of the United States Steel Corporation and allow Fortner Enterprises, Inc. to construct conventional homes on said lots. Mr. Dyas replied in substance as follows:

> I don't care about the component parts being furnished you by U. S. Steel Homes Division United States Steel Corporation, good, bad or indifferent. That is out of my department. Fortner Enterprises made an agreement with my company. It has an obligation to meet under this loan agreement, and I intend to see that Fortner Enterprises fulfills every obligation set forth in that agreement. United States Steel Homes Credit Corporation is not in the business of financing houses for other companies or businesses. Your little show does not impress me one bit.

With this rejoinder Mr. Dyas got up and left the office.

/s/ A. B. Fortner, Jr.

MOTION TO APPOINT A COMMISSIONER.

Comes the defendant, U. S. Steel Homes Credit Corporation, by counsel, and moves the court appoint a Commissioner in the within action for the purpose of aiding the court in the enforcement of any judgment it may enter herein.

/s/ Albert F. Reutlinger

ORDER APPOINTING COMMISSIONER.

The court being advised Jack E. Mudd Esq., of Louisville, Kentucky, is hereby appointed a Commissioner of this court in the within action for the purpose of aiding the court in enforcing any judgment it may enter herein and the said Commissioner's bond is set at $25,000.00, which bond will require surety thereon to be approved by this court and which bond shall be conditioned upon the

proper execution of the said Commissioner's duties as may be required by this court.

January 14th, 1964. /s/ Roy M. Shelbourne
Judge

JUDGMENT.

This case coming on to be heard on the U. S. Steel Homes Credit Corporation's motion for a summary judgment, the court having considered such motion, the arguments of counsel, the record herein and being sufficiently advised,

NOW, THEREFORE, IT IS CONSIDERED, ORDERED AND ADJUDGED:

1. U. S. Steel Homes Credit Corporation shall recover from Fortner Enterprises, Inc., on the obligation created by Land Note Number 2, 1960, $158,957.60 with accrued interest to and including August 31, 1963 of $14,014.12 and a daily accrual of interest after that date of $26.49, until paid.

2. U. S. Steel Homes Credit Corporation shall recover from Fortner Enterprises, Inc., on the obligation created by Construction Note Number 1, 1960, $8,244 with accrued interest to and including August 31, 1963 of $857.85 and a daily accrual of interest after that date of $1.37, until paid.

3. U. S. Steel Homes Credit Corporation shall recover from Fortner Enterprises, Inc., on the obligation created by Construction Note Number 2, 1960, $33,345 with accrued interest to and including August 31, 1963 of $3,105.46 and a daily accrual of interest after that date of $5.55, until paid.

4. U. S. Steel Homes Credit Corporation shall recover from Fortner Enterprises, Inc., on the obligation created by Land Note, 1961, $50,200 with accrued interest to and including August 31, 1963 of $4,176.55 and a daily accrual of interest after that date of $8.37, until paid.

5. U. S. Steel Homes Credit Corporation shall recover from Fortner Enterprises, Inc., on the obligation created by Collateral Note, 1961, $2,950 with accrued interest to and including August 31, 1963 of $204.50 and a daily accrual of interest after that date of 49c, until paid.

6. U. S. Steel Homes Credit Corporation shall recover from Fortner Enterprises, Inc., its costs incurred in the prosecution of this counterclaim.

7. U. S. Steel Homes Credit Corporation may have execution for the collection of its judgment debts.

8. To secure the payment of the debts mentioned in Sections 1, 2 and 3 of this judgment, together with a pro rata share of the costs, U. S. Steel Homes Credit Corporation has a lien on the below described property, prior and superior to all liens, except a lien for the 1962 and 1963 State, County and School taxes which are unpaid. The property, located in Jefferson County, Kentucky, is more fully described as:

Parcel 1.

BEING Lot No. 29 as shown and designated on the Plat of GOLDEN MEADOWS, SECTION 1-A, as it is recorded in Plat and Subdivision Book 15, Page 1, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.

Parcel 2.

BEING Lots No. 22, 23, 24, 48, 49, 53, 54 and 55, as shown and designated on the Plat of GOLDEN MEADOWS, SECTION 1-C, as it is recorded in Plat and Subdivision Book 15, Page 33, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.

Parcel 3.

BEING Lots No. 98, 99, 100, 101, 102 and 103, as shown and designated on the Plat of GOLDEN MEADOWS, SECTION 1-C, as it is recorded in Plat and Subdivision Book 15, Page 42, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.

Parcel 4.

BEING Lots No. 418 and 419, as shown and designated on the Plat of GOLDEN MEADOWS, SECTION 4-A, as it is recorded in Plat and Subdivision Book 14,

Page 81, in the Office of the Clerk of the County Court of Jefferson County, Kentucky?

Parcel 5.

BEGINNING at a point in the Southerly line of the tract conveyed to Rt. Rev. John Floersch by Deed of record in Deed Book 3349, Page 439, in the Jefferson County Court Clerk's Office, said point being the Northeasterly corner of Golden Meadows, Section 4A, as shown on the plat of same, which plat is of record in Plat and Subdivision Book 14, Page 81, in the aforementioned Clerk's Office; thence with the Southerly line of the tract conveyed to the Rt. Rev. John Floersh, aforementioned, South 65 degrees 58 minutes East 756.25 feet and South 65 degrees 00 minutes East 140.97 feet, South 3 degrees 40 minutes West 386.18 feet to a corner of and in the line of the remaining lands of E. M. Houchin; thence with several lines of said Houchins, North 65 degrees 00 minutes West 691.08 feet, South 20 degrees 31 minutes West 758.26 feet, and North 63 degrees 25 minutes West 321.80 feet to the Southeasterly corner of Golden Meadows, Section 4-A hereinabove mentioned; thence with several lines of said Golden Meadows, Section 4-A as follows: North 20 degrees 31 minutes East 384.74 feet, North 69 degrees 01 minutes West 140.0 feet, North 20 degrees 31 minutes East 60.0 feet, South 69 degrees 01 minute East 140.0 feet, and North 20 degrees 31 minutes East 652.94 feet to the place of beginning.

Parcel 6.

BEING Lot 78, Lots 85 through 97, inclusive, Lot 175, Lots 177 through 181, inclusive, Lots 183, 184, 191, and 194, Lots 197 through 201, inclusive, Lots 203, 204, 206, 207, 213, 214, and 216, Lot 390, Lots 392 through 409, inclusive, Lots 411 and 412, Lots 474, 475, 476, 478, 479, 480, 481, 482 and 483 Golden Meadows, Section 1-D, of record in Plat and Subdivision Book 18, Page 2, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.

9. To secure the payment of the debts mentioned in Sections 4 and 5 of this judgment, together with a pro rata share of the costs U. S. Steel Homes Credit Corporation has a lien on the below described property, prior and superior to all liens, except a lien for the 1962 and 1963 State, County and School taxes which are unpaid. The property, located in Jefferson County, Kentucky, is more fully described as:

Parcel 1.

BEING Lots Number 360 and 362, as shown and designated on the Plat of GOLDEN MEADOWS, SECTION 2-B-1, as it is recorded in Plat and Subdivision Book 15, Page 14, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.

Parcel 2.

BEING Lots Number 298, 299, 300, 301, 302, 303, 318, 320, 321, 322, 326, 327, 329, 330, 331, 332, 333, 334, 337, 338, 346, 347, 350, 351, 352, and 369, as shown and designated on the Plat of GOLDEN MEADOWS, SECTION 2-B-2, as it is recorded in Plat and Subdivision Book 16, Page 41, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.

10. Parcel Number 5, part of the encumbered property mentioned in Section 8 of this judgment, although divisible, may not be divided without materially affecting its value. The other parcels specified in both Sections 8 and 9 of this judgment are divisible into building lots in accordance with their numbered designation, but the individual lots are not further divisible and may not be divided without materially impairing their value.

11. In accordance with an order appointing Jack E. Mudd Commissioner, said Commissioner shall advertise the proposed sale of the property above described and thereafter sell same. He shall be guided by the following provisions in these matters:

(a) The sale shall be held at the courthouse door of the Jefferson County Courthouse, Louisville, Kentucky, at the hour of 11:00 A.M., on March 11, 1964.

(b) At least fifteen days before the date of sale, the Commissioner shall procure an appraisal by two competent persons as to the value of the properties to be sold, said appraisal to be made part of the record herein for the purposes contemplated by K.R.S. 426.229. The fee for such appraisals, shall be taxed as part of the cost of this action and be paid from the proceeds of the sale by the Commissioner as promptly as possible.

(c) On four consecutive weeks next prior to the date of sale the Commissioner shall place an advertisement of such sale in a daily newspaper of general circulation in Jefferson County, Kentucky giving the time, place and terms thereof, together with the amount to be raised by such sale. Further, the Commissioner shall cause handbills advertising the sale containing the same information above required, to be printed and distributed in his discretion. Fifteen days before the date of the sale, one such handbill shall be posted at the courthouse door of the Jefferson County Courthouse, Louisville, Kentucky and other copies posted in at least three other places in the vicinity of the property to be sold.

(d) The sale shall be at public auction.

(e) The properties shall be sold in the order below given.

(f) The following lots, which are improved with buildings, shall be offered first separately and then as a whole.

Lot 48, Golden Meadows, Section 1-B, Plat and Subdivision Book 15, Page 33 in the office of the Jefferson County Court Clerk, Kentucky.

Lot 49, Golden Meadows, Section 1-B, Plat and Subdivision Book 15, Page 33 in the clerk's office aforesaid.

Lot 78, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2 in the clerk's office aforesaid.

Lot 412, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2 in the clerk's office aforesaid.

Lot 478, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2 in the clerk's office aforesaid.

(g) The terms of the sale of the properties mentioned in subsection 11 (f) immediately above are; 10% of the purchase price to be paid in cash at the sale and the balance to be paid on the delivery of deed.

(h) The properties below described will first be offered as individual lots (the undeveloped tract in Group 8 to be considered as one individual lot), then collectively in the following groups and then as a whole.

Group 1.

Lot 29, Golden Meadows, Section 1-A, Plat and Subdivision Book 15, Page 1 in the office of the Clerk of the Jefferson County Court, Kentucky; Lots 22, 23, 24, 53, 54 and 55, Golden Meadows, Section 1-B, Plat and Subdivision Book 15, Page 33 in the clerk's office aforesaid; Lot 191, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2 in the clerk's office aforesaid.

Group 2.

Lots 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97 and 483, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2 in the clerk's office aforesaid.

Group 3.

Lots 98, 99, 100, 101, 102 and 103, Golden Meadows, Section 1-C, Plat and Subdivision Book 15, Page 42 in the clerk's office aforesaid; Lots 474, 475, 476, 479, 480 and 481, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2 in the clerk's office aforesaid.

Group 4.

Lots 194, 197, 198, 199, 200, 201, 203, 204, 206 and 207, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2 in the clerk's office aforesaid.

Group 5.

Lots 175, 177, 178, 179, 180, 181, 183 and 184, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2 in the clerk's office aforesaid.

Group 6.

Lots 213, 214, 216, 390, 405, 406, 407, 408, 409 and 411, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2 in the clerk's office aforesaid.

Group 7.

Lots 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404 and 482, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2 in the clerk's office aforesaid.

Group 8.

The undeveloped track of land designated as Parcel 5 in Section 8 of this judgment, together with Lots 418 and 419, Golden Meadows, Section 4-A, Plat and Subdivision Book 14, Page 81 in the clerk's office aforesaid.

(i) The properties below described will first be offered as individual lots, then collectively in the following groups and then as a whole.

Group 1.

Lots 360 and 362, Golden Meadows, Section 2-B-1, Plat and Subdivision Book 15, Page 14 in the office of the Clerk of the Jefferson County Court, Kentucky; Lots 326, 327, 350, 351, 352 and 369, Golden Meadows, Section 2-B-2, Plat and Subdivision Book 16, Page 41 in the clerk's office aforesaid.

Group 2.

Lots 318, 320, 321, 322, 329, 330, 331, 332, 333, 334, 346 and 347, Golden Meadows, Section 2-B-2, Plat and Subdivision Book 16, Page 41 in the clerk's office aforesaid.

Group 3.

Lots 298, 299, 300, 301, 302, 303, 337 and 338, Golden Meadows, Section 2-B-2, Plat and Subdivision Book 16, Page 41 in the clerk's office aforesaid.

(j) The terms of the sale of the properties in subsections 11 (h) and (i) immediately above are; 10% in cash at the time of sale, 20% of the purchase price in cash on the delivery of the deeds and the balance on or before the expiration of 18 months from the date of the deed. The deferred payments are to bear interest at the rate of 6% per annum from date of sale. The purchaser shall be required to execute bonds with good surety for the deferred payments and a lien shall be retained upon the property conveyed as additional security. Without penalty, the purchaser may prepay any of the deferred payments before maturity, but with accrued interest thereon. In addition, the purchaser may secure release of the individual lots from the vendor's lien, upon the payment of that individual lot's pro rata portion of the original purchase price related to that group of lots of which the lot to be released is a part, together with accrued interest thereon.

(k) All property sold in accordance with this judgment is sold subject to (i) 1962 State, County and School taxes (ii) 1963 State, County and School taxes (iii) 1964 State, County and School taxes and all taxes thereafter (iv) easements and restrictions of record and (v) applicable zoning laws.

(l) Except for the encumbrances mentioned above, the property is to be sold free and clear of all other liens and encumbrances.

12. The Commissioner, as soon as the sales have been made, deeds delivered and the money paid in accordance with the terms of the sales, shall first pay the costs and expenses of this action, including a reasonable allowance for his service rendered to date as determined by the court,

and thereafter shall pay the aggregate judgment debts of the U. S. Steel Homes Credit Corporation to it. The surplus, if any (reserving a sufficient sum for anticipated expenses for the Commissioner) shall be paid to Fortner Enterprises, Inc.

13. This judgment shall be executed immediately.

14. In the event Fortner Enterprises, Inc., does not promptly execute and deliver conveyances of the lands to the purchasers thereof and deliver such other necessary documents, then the Commissioner, shall execute and deliver such. Conveyance by the Commissioner shall convey a good fee simple title, subject only to the limitations found in Section 11 (k) of this judgment.

15. This action is retained on the docket for such further and necessary orders as the court may determine.

Roy M. Shelbourne
Judge

ANSWERS TO INTERROGATORIES ON BEHALF OF UNITED STATES STEEL CORPORATION.

Affiant, after being duly sworn, states that his name is is Harry R. Black, that he is Vice President-Operations of United States Steel Corporation (Homes Division) and that the following answers to certain interrogatories propounded to United States Steel Corporation are true to the best of his information and belief.

12. For the years 1960, 1961 and 1962 identify each different prefabricated house or package of component parts for a prefabricated house sold by United States Steel Corporation and/or its divisions by giving its model number or other appropriate means of identification.

c. As to each such model, give separately the cost allocated on the books of United States Steel Corporation or its appropriate division or divisions for manufacture, sales, advertising, overhead and total cost.

Answers to Interrogatories on Behalf of U. S. Steel Corp.

United States Steel Homes Division books of accounts are maintained on a responsibility accounting basis and it does not have either the total cost or the cost for manufacture, sales, advertising or overhead of each or any of the home models listed in the answer of United States Steel Corporation to plaintiff's Interrogatory 12, previously filed in this litigation.

17. For each of the years 1960, 1961 and 1962 identify each purchaser except Fortner Enterprises, Inc. of United States Steel Homes or component parts for prefabricated houses which has complained to United States Steel Corporation or any of its divisions about the quality of the said United States Steel Homes or any of the said component parts for prefabricated houses by giving said complainant's name and address, or if a company, the company name and address.

a. If any of the said complaints were in writing, identify each such written complaint by giving the name of the company or person making the complaint, the author of the written complaint, the date of said writing, and the person having control over or custody of said writing.

b. If any of the said complaints were oral, identify each person or company making an oral complaint, the employee of United States Steel Corporation or its divisions to whom said complaint was made, the approximate date of each such complaint, and the subject matter of each such complaint.

In the years 1960, 1961 and 1962, the purchasers of home packages or component parts therefor from United States Steel Homes Division who complained about the quality of component parts, the approximate dates of the complaints, and, where known, the nature of the specific complaints, are set forth in the attached list marked "Attachment to Answer to Interrogatory 17". The records from which this information was obtained are the files of Daily

Answers to Interrogatories on Behalf of U. S. Steel Corp.

Activity Reports and the Customer Service division files of United States Steel Homes Division, in the custody of Stanley J. Mack, Manager-Dealer Sales and E. L. Akers, Jr., Manager-Customer Service, respectively, of United States Steel Homes Division, 2549 Charlestown Road, New Albany, Indiana.

Harry R. Black

ATTACHMENT TO ANSWER TO INTERROGATORY 17.

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
H. Adams Development Co. Route 100 at Levis Lane Godfrey, Illinois	11-14-61	—
Ajax Construction Co. 314 Market Street Parkersburg, West Virginia	11-25-60 10-12-61	Defective glumac shingles —
Andover Development Co. 30 Plaza Park Forest, Illinois	9-27-60 11- 7-60 2-16-61	— — —
Appalachian Enterprises, Inc. P. O. Box 4316 Bluefield, West Virginia	5-28-62 11- 1-62	— —
Armstrong Building Co. 239 Pauline Place Waterloo, Iowa	1-21-61 3- 8-61	— —
B&E Construction Co., Inc. 501 E. 19th Street South Sioux City, Nebraska	11-16-62	—
Barnes, Lawrence M. 109 S. Washington St. Mexico, Missouri	8-24-61 3- 5-62 3- 7-62	Counter top fit — —
M. T. Broyhill & Sons Corp. 4610 Lee Highway Arlington 7, Virginia	7-16-62 8-29-62 10- 3-62 10- 3-62 11-23-62	— — — — —
Burkhart & Company Corner of Locust & Main Sts. New London, Iowa	11- 9-61	—

Answers to Interrogatories on Behalf of U. S. Steel Corp.

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
Burris Bros. Const. Co., Inc. 624 E. Second St. Tulsa, Oklahoma	11-20-60	Deformed wood louvered doors
	7-24-62	—
Charter, Inc. 314 Third St. Ishpeming, Michigan	10-20-60	—
	11-11-60	Defective trusses
Cheesman Development Co. 601 S. Queen St. Martinsburg, West Virginia	2-26-60	Defective roof sheathing
Clayton Savings & Loan Ass'n. 666 Broadway Hannibal, Missouri	5-26-60	—
	9-26-60	—
	6-28-61	—
	8- 1-61	—
	8-31-61	Paint-exterior door
	9- 6-61	—
Community Builders 119 S. Canal St. Canal Fulton, Ohio	2- 4-60	—
Crown Construction Corp. 1981 W. 9th St. Cleveland 2, Ohio	11-22-60	—
	5-28-62	—
Crump, James G. Albin Road Bow, New Hampshire	1-18-60	Defective glumac shingles
	11-17-60	—
	11-28-60	—
	11-28-60	—
	8- 1-61	—
	9-13-61	—
	4-27-62	—
Decatur Community Builders R.F.D. #4 Decatur, Indiana	12- 4-61	—
Delaware Home Bldrs. Co. 145 Penick Ave. Delaware, Ohio	9-30-60	—
	2- 3-61	—
	2- 3-61	Defective lock sets
Down Construction Co. Box 285 Barre, Vermont	12- 4-61	—

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
Dunseth & Sapp	3-12-60	Window moisture
200 E. Pine	10- 5-61	Counter top
Springfield, Illinois	10-19-61	—
	10-19-61	—
Dunzweiler Trend Homes	10-31-60	—
1104 Military Road	7-18-61	—
Zanesville, Ohio	8-30-61	—
	9-21-61	Leaking window
	11-10-61	—
	7-18-62	Defective cabinet door
	7-27-62	—
Eagles Company	1-22-62	—
4406 Shelbyville Road	8-24-62	—
Louisville, Kentucky	11- 7-62	—
	11-28-62	—
	12- 4-62	—
	12-18-62	—
	12-20-62	—
Eckhardt Bldg. & Supply	7-27-62	Oversize interior partition
Taylor Ridge, Illinois 61284		
Fifth Cincinnati Bldrs., Inc.		
P. O. Box 31157	5- 8-61	—
Cincinnati 31, Ohio	6-13-61	—
	7-10-61	—
	7-18-61	—
	8- 1-61	—
	8-10-61	—
	8-21-61	—
	10- 2-61	—
	10-11-61	—
	10-12-61	—
	10-12-61	—
	10-25-61	—
	10-26-61	—
	10-30-61	—
	11- 2-61	—
	11- 6-61	—
	1-16-62	—
	1-17-62	—
	1-17-62	—
	1-19-62	—

(Continued on following page)

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
Fifth Cincinnati Bldrs., Inc. (Continued)	2-22-62	—
	2-27-62	—
	3-13-62	—
	3-13-62	—
	3-21-62	—
	3-22-62	—
	3-23-62	—
	5-15-62	—
	5-21-62	—
	6- 1-62	—
	8- 6-62	—
	8- 6-62	—
	6-18-62	—
	8-24-62	—
	8-29-62	—
	9-10-62	—
	9-17-62	—
	9-18-62	—
	9-20-62	—
	10- 4-62	—
	12- 4-62	—
Fourth Hoosier Villas, Inc. P. O. Box 841 Marion, Indiana	4- 9-62	—
John W. Galbreath & Co. 42 E. Gay St. Columbus 15, Ohio	1- 6-60	—
	1- 8-60	—
	1-21-60	—
	1-26-60	—
	2-29-60	—
	11-25-60	—
	1-13-61	—
	1-14-61	—
	1-18-61	Drywall cracking; front and rear doors cracked
	1-30-61	—
	2- 3-61	Exterior doors cracked
	4- 7-61	—
	4-17-61	—
	4-20-61	—
	5- 3-61	—
	5- 3-61	—
	5-12-61	Exterior doors warped

(Continued on following page)

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
John W. Galbreth & Co.	5-19-61	—
(Continued)	5-19-61	Defective closet door; exterior door
	5-29-61	—
	6- 5-61	Cracked interior door
	6-16-61	—
	6-16-61	—
	7-10-61	—
	9- 9-61	—
	9-21-61	—
	9-21-61	—
	10-12-61	—
	3- 1-62	—
	4- 6-62	—
	8-15-62	Wrong lock set in door
	8-20-62	—
E. H. George Homes	10-28-60	—
201½ W. Main St.	6-15-62	Defective roof shingles
Marshalltown, Iowa		
The Geren Company	2-25-60	Rivet pops
(Formerly R&G Bldrs.)	4-2-62	—
1000 N. Coal St.	8- 3-62	—
Lima, Ohio	10-16-62	—
Giblins Home Bldrs.	6-24-60	—
1316 Prairie DuChien Road	5-17-60	Nail pops-interior walls
Iowa City, Iowa	4-13-61	—
	4-15-61	—
	4-15-61	Nail pops-drywall; exterior door cracked
	8-15-62	Undersize window screens; bowed win. sill
	9-19-62	Wrong lock set in door
	9-26-62	—
	10- 1-62	—
Grandview Development Co.	9-26-61	—
36 Grandview Ave.		
Lincoln Park, New Jersey		
Quentin Griffey, Builder	5-26-60	—
P. O. Box 238	3-20-61	—
Ellerslie, Maryland	4-28-61	Split panel; front door cracked; window pane small

(Continued on following page)

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
Quentin Griffey, Builder (Continued)	5- 3-61	—
	5-10-61	—
	5-10-61	—
	5-14-61	—
	10-23-61	—
	12-19-61	—
	4-12-62	—
	4-18-62	—
Harris-Mark Const'n. Co., Inc.	3- 3-60	—
P. O. Box 95	3- 5-60	Warped doors; nail pops
Loves Park, Illinois	6- 1-60	—
Harrison Homes, Inc.	5 - 2-62	Racked interior panel;
5475 N. Park Drive		windows stuck
Indianapolis 20, Indiana	11-21-62	Defective grills-windows
Harter & Brooks, Inc.	5-17-62	—
1622 E. Spring St.	7-13-62	—
New Albany, Indiana		
Hoosier Builders	3- 6-61	—
1622 E. Spring St.		
New Albany, Indiana		
Hoosier Villas, Inc.	1- 3-61	—
P. O. Box 841		
Marion, Indiana		
Paul Hathaway Rlty. & Const. Co.	2-16-61	Chimney hood-rust
111 W. Main St.		
North Manchester, Indiana		
Orville R. Haynes	4-21-60	—
401 Peoples Bank Bldg.		
Washington, Indiana		
Heritage Bldg. Corp.	5-17-62	—
10 S. Brentwood Blvd.		
Clayton 5, Missouri		
Highland Terrace, Inc.	5-24-60	—
4601 Locust Lane	12- 9-60	—
Harrisburg, Pennsylvania	5- 8-61	—
	6- 2-61	—
	8-23-61	—
	8-28-61	—
	8-31-61	—

(Continued on following page)

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
Highland Terrace, Inc. (Continued)	2-21-62	—
	4- 9-62	—
	5-15-62	—
	6-14-62	—
	6-21-62	—
	6-22-62	—
	7-23-62	—
Hillsdale Development Corp.	2- 2-61	—
2107 Springfield Troy Rd.	5-12-62	Dry-wall-paint blisters
Springfield, Ohio	11- 7-62	—
Home Materials, Inc.	3-29-60	—
P. O. Box 2505	10-10-60	—
Des Moines 15, Iowa	11- 2-60	Defective window glass
Hamilton Hunter, Inc.	1-12-60	—
219 E. Berry St.	8-10-60	—
Fort Wayne, Indiana	6-28-61	—
	9-28-61	—
	10-17-61	—
	4-19-62	—
	9-24-62	—
Jesse J. Hvolbeck Const. Co., Inc.	4-13-60	—
P. O. Box 25	8- 1-62	—
Glenville, Connecticut		
Joy Construction Co.	11-27-61	—
R.D. #2	12-11-61	—
West Lake Road, Rt. 246	3- 5-62	—
Vermillion, Ohio	3- 5-62	Wall cabinet dr. warping
Knox Realty Co.	12- 9-61	—
1812 Dixie Highway	12-19-61	—
Radcliff, Kentucky	8-15-62	—
Litchfield County Homes	1- 7-60	—
Box 327, 157 Migeon Ave.	1-27-60	—
Torrington, Connecticut	6- 7-60	—
	9-26-60	Window-paint peeling, water leaks; drywall cracking
Clifford C. Loss, Inc.	1- 9-61	Drywall cracks
5628 King Arthur Court	1-13-61	—
Toledo, Ohio	2- 3-61	—

(Continued on following page)

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
Clifford C. Loss, Inc.	3-11-61	—
(Continued)	3-24-61	Drywall cracks
	5-29-61	—
	6-22-61	—
	9-28-61	—
	10-25-61	—
	11-15-61	—
	11-20-61	—
	12-11-61	—
	12-18-61	—
	3- 5-62	—
	3- 5-62	Wall cabinet dr. warping
	5- 3-62	—
The Lux Agency	2-20-61	—
654 Main Street	3-28-61	—
Lafayette, Indiana		
Kenneth M. Mace	12- 3-60	Warped door
17th & Washington Sts.	1-31-61	Interior door warped
Clarinda, Iowa	3- 6-61	
	9-25-61	
Jean A. McCoy & Sons, Inc.	5-24-60	
417 Sherman Ave.	10-24-60	
Pontiac, Illinois	11-28-60	
Midland Dev. Co., Inc.	8-25-60	—
7140 Wornall Road	1-11-61	—
Kansas City, Missouri	2- 8-61	—
	2-22-61	—
	3-12-61	—
	7- 5-61	Dr. & window water leak
	7- 7-61	—
	8- 3-61	—
	8-21-61	—
	9-21-61	—
	9-23-61	—
	9-25-61	—
	9-26-61	—
	10- 4-61	—
	11- 6-61	—
	11- 7-61	—
	11-13-61	—
	11-13-61	—
	12- 6-61	—

(Continued on following page)

Answers to Interrogatories on Behalf of U. S. Steel Corp.

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
Midland Dev. Co., Inc. (Continued)	12- 6-61	—
	12-19-61	—
	12-19-61	—
	12-28-61	—
	1- 2-62	—
	1-22-62	—
	1-30-62	—
	2-19-62	—
	3-19-62	—
	3-19-62	—
	3-19-62	—
	3-26-62	—
	4- 4-62	—
	4-11-62	—
	4-18-62	—
	4-23-62	—
	5- 3-62	—
	5-17-62	—
	5-17-62	—
	6-21-62	—
	6-27-62	—
	7-17-62	—
	7-18-62	—
	7-19-62	—
	7-19-62	—
	8- 1-62	
	8-10-62	—
	8-20-62	—
	8-21-62	—
	9-26-62	—
	10- 9-62	—
	10-15-62	—
	10-24-62	—
	11- 7-62	—
	11- 8-62	—
	11-13-62	—
	12-12-62	—
	12-19-62	—
Nemmers Bros. Construction 436 Second Ave., N.E. P. O. Box 525 LeMars, Iowa	8-13-60	—
	6- 6-61	—

Answers to Interrogatories on Behalf of U. S. Steel Corp.

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
North Cincinnati Bldrs., Inc.	5- 7-60	—
P. O. Box 31157	7- 1-60	—
Cincinnati 31, Ohio	2- 9-61	—
	4-19-61	—
	4-26-61	—
	4-27-61	—
	5- 8-61	—
	5-19-61	—
	6- 1-61	—
	6-13-61	—
	6-22-61	—
	6-29-61	—
	8-21-61	—
	9-11-61	—
	9-11-61	—
	9-12-61	—
	9-20-61	—
	9-29-61	—
	10-12-61	—
	10-17-61	—
	10-19-61	—
	10-25-61	—
	11- 2-61	—
	1-23-62	—
	2-26-62	—
	3- 1-62	—
	3- 5-62	—
	3-13-62	—
	3-21-62	—
	3-22-62	—
	4-16-62	—
	4-19-62	—
	5- 9-62	—
	5-23-62	—
	8-24-62	—
	9-17-62	—
	9-19-62	—
	10-30-62	—
	11- 1-62	—
	11- 6-62	—
	11-16-62	—
	12- 5-62	—
	12- 6-62	—

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
North Hills, Inc.	11-21-61	—
P. O. Box 547	1-10-62	—
Mundelein, Illinois	5- 1-62	—
	5-15-62	—
	6-26-62	—
	8-27-62	—
	8-31-62	—
The O. K. Co., Inc.	2- 7-61	—
8516 Preston Highway		
Louisville, Kentucky		
Ohio Home Distributors, Inc.	11-30-60	—
2424 Far Hills Avenue	6- 5-62	—
Dayton 19, Ohio	10-31-62	—
	11- 9-62	—
Fifteenth Ohio Builders, Inc.	2- 1-62	—
Fourteenth Ohio Builders, Inc.	3-14-61	—
Ninth Meadowdale, Inc.	1-23-61	—
	4-10-61	—
	6- 8-61	—
	8-22-61	—
	11- 8-61	—
	12-15-61	—
	2- 1-62	—
	3-15-62	—
	3-21-62	—
	4- 9-62	—
	4- 9-62	—
	5- 9-62	—
	6-27-62	—
	9-10-62	—
Steel Homes, Inc.	4-12-60	—
	4-15-60	—
	5- 9-60	—
Twelfth Ohio Builders, Inc.	6- 9-60	—
	6-28-60	—
	11- 1-60	—
	11-14-60	—
	12- 2-60	—
	2-27-61	—
	5-19-61	—
	6- 1-61	—

(Continued on following page)

Answers to Interrogatories on Behalf of U. S. Steel Corp.

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
Ohio Home Distributors, Inc.	6- 1-61	—
Twelfth Ohio Builders, Inc.	6- 8-61	—
(Continued)	6-29-61	—
	6-29-61	
	7- 6-61	
	9-21-61	
	10-23-61	—
	10-30-61	—
	10-31-61	—
	12-19-61	—
	1-17-62	—
	1-23-62	—
	2- 1-62	—
	3-21-62	—
	4- 9-62	—
	4-18-62	—
	6- 1-62	—
	8-17-62	—
	10-31-62	—
Valley Hi, Inc.	4-12-60	—
	5-18-60	—
	2-27-61	—
	2-28-61	—
	3-14-61	—
	5- 8-61	—
	6- 2-61	—
	6- 2-61	—
	6- 2-61	—
	6- 6-61	—
	6- 7-61	—
	6- 8-61	—
	6- 8-61	—
	6- 8-61	—
	6-13-61	—
	6-29-61	—
	8-21-61	—
	9-29-61	—
	10- 2-61	—
	10-19-61	—
	10-27-61	—
	10-27-61	—
	10-30-61	—
	11- 3-61	—

(Continued on following page)

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
Valley Hi, Inc.	12-19-61	—
(Continued)	12-21-61	—
	1-17-62	—
	1-18-62	—
	1-23-62	—
	4- 9-62	—
	4- 9-62	—
	5-16-62	—
	6- 1-62	—
	6- 1-62	—
	8-13-62	—
	8-17-62	—
	10- 3-62	—
	12-12-62	—
Omaha Holiday Homes, Inc.	6-24-60	—
8401 W. Dodge St.	10-17-61	—
Omaha, Nebraska	11-21-61	—
	12- 4-61	—
	6-15-62	Threshold leaking
	9-17-62	Leaky windows & thresholds
Own Your Home System	5-20-61	Defective lock set
203½ W. Third St.	5-29-61	—
Yankton, South Dakota	12-12-61	—
Sidney D. O'Shea	1- 3-61	—
25 Hilltop Drive	7-10-61	—
LeRoy, New York	5-31-62	—
Ozier Construction Co.	8- 5-61	—
315 S. Van Doren St.		
Champaign, Illinois		
Pell Home Construction Co.	5-15-61	—
Box 336		
Brazil, Indiana		
J. B. Pfister Co., Inc.	6-18-60	—
662 Ohio Street, Box 988		
Terre Haute, Indiana		
Regency Homes Inc.	8-13-62	—
7140 Wornall Road	10-15-62	—
Kansas City, Missouri		

Answers to Interrogatories on Behalf of U. S. Steel Corp.

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
C. E. Richards, Jr.	1- 4-60	—
939 Avenue H, Box 302	1- 5-60	—
Fort Madison, Iowa	4-13-61	—
Richland Homes, Inc.	10- 2-62	Defective interior panels
P. O. Box 698, Poplar Drive	11-12-62	—
Richland Manor	11-13-62	Defective locks
Ellettsville, Indiana	11-20-62	Defective cabinet door
S & H Corporation	12-21-61	—
234 Main Street	3-29-62	—
Orono, Maine		
Sandstroms	4-18-61	—
1063 Twelfth Avenue		
Brockway, Pennsylvania		
Donavon B. Sondreal	11-20-60	—
265 Fifteenth St., S.E.	12-19-61	—
Huron, South Dakota	5- 9-62	—
South Lorain Realty Co.	11- 4-60	—
2339 East 42nd St.		—
Lorain, Ohio		
Spartan Steel Structures, Inc.	12-13-62	—
107 North Black River St.		
Box 398		
Sparta, Wisconsin		
Stoll-Myers Builders, Inc.	9-26-60	—
3168 Arrowhead Drive	10-24-60	—
Lexington, Kentucky	12-13-60	—
Suburban Bldg. & Dev. Co.	4-15-60	Roof shingles — flashing too short
P. O. Box 388		
Troy, Ohio		
Superior Homes, Inc.	2-24-60	—
6326 North California St.	3-23-60	—
Chicago 45, Illinois	10- 2-60	—
	10-10-60	—
	12- 7-60	—
	11-10-61	—
	12- 8-61	—
	12-11-61	—
	1-23-62	—
	3-22-62	—
	4-24-62	—

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
Third Hoosier Villas, Inc.	3- 1-62	—
P. O. Box 841	4- 9-62	—
Marion, Indiana	5- 7-62	—
Everett H. Thorne Co.	10-30-61	—
320 Red Hill Road		
Middletown, New Jersey		
Thunderbird Homes, Inc.	1-22-60	—
804 E. 185th St.	1- 2-62	—
Cleveland 19, Ohio	8-23-62	—
	10-19-62	Siding — blistering
	11- 1-62	Out-of-square panels; lock holes out of position
	12-10-62	Drywall cracking; siding blisters
	12-11-62	—
Tonn and Blank, Inc.	6-30-60	—
104 N. Franklin St.	8-26-60	—
Michigan City, Indiana	3- 2-61	—
	4- 4-61	—
	8-24-61	—
	10-18-61	—
	11- 6-61	—
W. Anthony Torsell, Inc.	1- 8-61	Drywall cracking
2107 Springfield Troy Rd.	2- 2-61	—
Springfield, Ohio	4-24-61	—
	5-26-61	—
	7- 6-61	—
	8-23-61	—
	10-18-61	—
	2- 8-62	—
	3- 6-62	Closet door — defective
	4-11-62	—
	7-17-62	—
	10-29-62	—
Town and Country Homes, Inc.	8-15-62	—
1112 E. Broadway	12-31-62	—
Louisville, Kentucky	12-31-62	—
Benjamin Trumbull, Inc.	3-31-60	—
404 McNeal Street	5-12-60	—
Jackson, Michigan	5-19-60	—
	5-26-60	—
	3-21-61	—
	9- 8-61	—

Answers to Interrogatories on Behalf of U. S. Steel Corp.

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
Twin City Bldg & Dev. Corp. 2444 Fairview St. Allentown, Pennsylvania	2-27-61	—
Una Manor Homes, Inc. 503 James Robertson Parkway Nashville, Tennessee	4- 4-61	—
United Construction Company 3749 Mahoning Avenue Youngstown 9, Ohio	1-10-61	—
	4- 5-61	—
	4-26-61	—
	9-21-61	—
	10- 7-61	—
	10-24-61	—
	11-27-61	—
	12-18-61	—
	2-19-62	Defective counter top
	4-13-62	—
	5- 1-62	Counter top defective
	5-16-62	—
	12-13-62	—
Valleydale Builders, Inc. P. O. Box 634 Strow, Ohio	1- 2-60	—
	1- 5-60	—
	3-10-60	—
	5-16-60	—
	10-22-60	—
	10-27-60	—
	11- 1-60	—
	12-30-60	—
	1-23-61	—
	2-27-61	—
	3-10-61	Warped gable ends
	4-26-61	—
	5-17-61	—
	5-19-61	—
	5-21-61	—
	7-14-61	—
	7-25-61	—
	7-27-61	—
	8-15-61	—
	10-12-61	—
	10-12-61	—
	10-24-61	—
	2-15-62	—

(Continued on following page)

Purchased from United States Steel Homes Division	Approximate Date of Complaint	Nature of Specific Complaint
Valleydale Builders, Inc. (Continued)	2-19-62	—
	3- 5-62	Defective closet doors
	4- 5-62	Counter top defective
	7-20-62	—
	8-26-62	—
	11-28-62	—
	11-29-62	—
Willow Dell Builders, Inc. P. O. Box 31157 Cincinnati 31, Ohio	4-11-61	—
	5- 9-61	—
	9- 6-61	—
	12-19-61	—
	3-13-62	—
	3-21-62	—
	6-18-62	—
	6-18-62	—
	7-20-62	—
	8-24-62	—
	10- 1-62	—
	11-15-62	—
	12-11-62	—

ORDER FILING APPRAISAL AND ALLOWANCE OF FEE.

On Motion of Jack E. Mudd, Commissioner, and the Court being sufficiently advised:

IT IS HEREBY ORDERED that the Appraisal as made by the duly appointed Appraisers herein, be filed herein and made a part of this record, and it is further Ordered that each of said Appraisers be allowed a fee for services rendered in the amount of TWO HUNDRED ($200.00) DOLLARS each, same to be taxed as costs.

/s/ Roy M. Shelbourne
Judge

APPRAISAL REPORT.

February 25, 1964

We, the undersigned, householders of Jefferson County, Kentucky, disinterested and in no wise related to either party of the above-styled suit, and having been sworn by Jack E. Mudd, Commissioner, to appraise all the properties in the above suit, do hereby appraise the property as follows:

Under Paragraph 1, of the Sale Bill:

The following parcels of property are presently improved and are appraised as follows:

Lot 48, Section 1-B, Golden Meadows Subdivision:	
Land	$2,200.00
Improvements	6,000.00
Total	$8,200.00
Lot 49, Section 1-B, Golden Meadows Subdivision:	
Land	$2,200.00
Improvements	6,000.00
Total	$8,200.00
Lot 78, Section 1-D, Golden Meadows Subdivision:	
Land	$2,200.00
Improvements	5,500.00
Total	$7,700.00
Lot 412, Section 1-D, Golden Meadows Subdivision:	
Land	$2,200.00
Improvements	5,800.00
Total	$8,000.00

Appraisal Report

Lot 478, Section 1-D, Golden Meadows Subdivision:

Land	$2,000.00
Improvements	6,000.00
Total	$8,000.00

It is the opinion of these appraisers that, should these 5 properties be sold as a group, a fair market value would be THIRTY THOUSAND DOLLARS ($30,000.00).

UNDER PARAGRAPH 2. OF THE SALE BILL:

GROUP 1.

The parcels in this group are unimproved and are appraised as follows:

Lot 29, Section 1-A, Golden Meadows Subdivision: $2,500.00

Lot 22, Section 1-B, Golden Meadows Subdivision: $2,000.00

Lot 23, Section 1-B, Golden Meadows Subdivision: $2,000.00

Lot 24, Section 1-B, Golden Meadows Subdivision: $2,000.00

Lot 53, Section 1-B, Golden Meadows Subdivision: $2,000.00

Lot 54, Section 1-B, Golden Meadows Subdivision: $2,000.00

Lot 55, Section 1-B, Golden Meadows Subdivision: $2,000.00

Lot 191, Section 1-D, Golden Meadows Subdivision: $2,200.00

It is the opinion of these appraisers that should these properties be sold as a group, a fair market value would be FIFTEEN THOUSAND DOLLARS $15,000.00.

Appraisal Report

GROUP 2.

All parcels in this group are unimproved and are appraised as follows:

Lot 85, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 86, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 87, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 88, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 89, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 90, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 91, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 92, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 93, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 94, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 95, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 96, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 97, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 483, Section 1-D, Golden Meadows Subdivision: $2,000.00

It is the opinion of these appraisers that should these properties be sold as a group, a fair market value would be TWENTY-FIVE THOUSAND DOLLARS $25,000.00.

Appraisal Report

GROUP 3.

The following parcels of property are presently unimproved and are appraised as follows:

Lot 98, Section 1-C, Golden Meadows Subdivision: $2,000.00

Lot 99, Section 1-C, Golden Meadows Subdivision: $2,000.00

Lot 100, Section 1-C, Golden Meadows Subdivision: $2,000.00

Lot 101, Section 1-C, Golden Meadows Subdivision: $2,100.00

Lot 102, Section 1-C, Golden Meadows Subdivision: $2,100.00

Lot 103, Section 1-C, Golden Meadows Subdivision: $2,000.00

Lot 474, Section 1-D, Golden Meadows Subdivision: $2,200.00

Lot 475, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 476, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 479, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 480, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 481, Section 1-D, Golden Meadows Subdivision: $2,100.00

It is the opinion of these appraisers that should these properties be sold as a group, a fair market value would be TWENTY-TWO THOUSAND DOLLARS $22,000.00.

GROUP 4.

The following parcels of property are presently unimproved and are appraised as follows:

Lot 194, Section 1-D, Golden Meadows Subdivision: $2,200.00

Lot 197, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 198, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 199, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 200, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 201, Section 1-D, Golden Meadows Subdivision: $2,100.00

Lot 203, Section 1-D, Golden Meadows Subdivision: $2,200.00

Lot 204, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 206, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 207, Section 1-D, Golden Meadows Subdivision: $2,000.00

It is the opinion of these appraisers that should these properties be sold as a group, a fair market value would be EIGHTEEN THOUSAND DOLLARS $18,000.00.

GROUP 5.

Lot 175, Section 1-D, Golden Meadows Subdivision: $2,200.00

Lot 177, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 178, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 179, Section 1-D, Golden Meadows Subdivision: $2,000.00

Appraisal Report

Lot 180, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 181, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 183, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 184, Section 1-D, Golden Meadows Subdivision: $2,000.00

It is the opinion of these appraisers that should these properties be sold as a group, a fair market value would be FOURTEEN THOUSAND, FIVE HUNDRED DOLLARS $14,500.00.

GROUP 6.

Lot 213, Section 1-D, Golden Meadows Subdivision: $2,200.00

Lot 214, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 216, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 390, Setcion 1-D, Golden Meadows Subdivision: $2,000.00

Lot 405, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 406, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 407, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 408, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 409, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 411, Section 1-D, Golden Meadows Subdivision: $2,000.00

Appraisal Report

It is the opinion of these appraisers that should these properties be sold as a group, a fair market value would be EIGHTEEN THOUSAND DOLLARS $18,000.00.

GROUP 7.

Lot 392, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 393, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 394, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 395, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 396, Section 1-D, Golden Meadows Subdivision: $2,200.00

Lot 397, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 398, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 399, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 400, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 401, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 402, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 403, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 404, Section 1-D, Golden Meadows Subdivision: $2,000.00

Lot 482, Section 1-D, Golden Meadows Subdivision: $2,200.00

It is the opinion of these appraisers that should these properties be sold as a group, a fair market value would be TWENTY-FIVE THOUSAND DOLLARS $25,000.00.

GROUP 8.

Lot 418, Section 4-A, Golden Meadows Subdivision: $2,500.00

Lot 419, Section 4-A, Golden Meadows Subdivision: $2,500.00

Parcel 5, Group 8 (undeveloped tract) Site: $5,000.00

It is the opinion of these appraisers that should these properties be sold as a group, a fair market value would be TEN THOUSAND DOLLARS $10,000.00.

It is the opinion of these appraisers that, should all the properties under Paragraph 2. of the Sale Bill, that is, Groups 1 through 8 inclusive, should be sold as a whole, then a fair market value would be ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS ($125,000.00).

UNDER PARAGRAPH 3 OF THE SALE BILL:

GROUP 1.

Lot 360, Section 2-B-1, Golden Meadows Subdivision: $2,000.00

Lot 362, Section 2-B-1, Golden Meadows Subdivision: $2,000.00

Lot 326, Section 2-B-2, Golden Meadows Subdivision: $2,200.00

Lot 327, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 350, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 351, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 352, Section 2-B-2, Golden Meadows Subdivision: $2,200.00

Lot 369, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Appraisal Report

It is the opinion of these appraisers, that should these properties be sold as a group, a fair market value would be FOURTEEN THOUSAND, FIVE HUNDRED DOLLARS $14,500.00.

GROUP 2.

Lot 318, Section 2-B-2, Golden Meadows Subdivision: $2,200.00

Lot 320, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 321, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 322, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 329, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 330, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 331, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 332, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 333, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 334, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 346, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 347, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

It is the opinion of these appraisers, that should these properties be sold as a group, a fair market value would be TWENTY-ONE THOUSAND, FIVE HUNDRED DOLLARS $21,500.00.

Appraisal Report

GROUP 3.

Lot 298, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 299, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 300, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 301, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 302, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 303, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 337, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

Lot 338, Section 2-B-2, Golden Meadows Subdivision: $2,000.00

It is the opinion of these appraisers that should these properties be sold as a group, a fair market value would be FOURTEEN THOUSAND, FIVE HUNDRED DOLLARS $14,500.00.

It is the opinion of these appraisers that, should all the properties under Paragraph 3, of the Sale Bill, that is Groups 1 through 3 inclusive, should be sold as a whole, then a fair market value would be FORTY THOUSAND DOLLARS ($40,000.00).

Respectfully submitted,

/s/ Allan Nash
Realtor — Appraiser.

/s/ John M. Prood,
M.A. I.

ORDER FILING REPORT OF SALE OF COMMISSIONER.

On Motion of Jack E. Mudd, Commissioner, and the Court being sufficiently advised:

IT IS ORDERED that the Report of Sale of the Commissioner be filed herein and made a part of this record, same to lay over for confirmation by this Court.

/s/ Roy M. Shelbourne
Judge

March 18, 1964

REPORT OF SALE.

Pursuant to Judgment entered into, the undersigned, as Commissioner in the above styled action, advertised the required information concerning the judicial sale held on March 11, 1964, by posting printed handbills at least fifteen (15) days before the date of sale, one at the Jefferson County Courthouse door, Louisville, Kentucky; one upon the property, and others at least in three other places in the vicinity of the property to be sold; and also advertised by insertion for four consecutive weeks next prior to the date of sale in the "Louisville Times" a newspaper of general circulation in Jefferson County, Kentucky, on February 14th, 21st, 28th, and March 6th, 1964, respectively, stating the time, place, and terms of sale, amount to be raised, and giving a description of the property that the undersigned, would on Wednesday, March 11, 1964, on or about the hour of 11:00 o'clock, A. M. sell at public auction to the highest and best bidder at the Jefferson County Courthouse, Louisville, Kentucky, on terms as set forth the property described in the sale bill attached hereto and made a part of this Report of Sale, said property being located in Jefferson County, Kentucky.

Report of Sale

SALE

In acceptance with the Judgment, I offered and cried the property described in Paragraph #1 of the attached sale bill, first separately, and then as a whole, when and where Robert F. Simmons, 840 Barrett Avenue, Louisville, Kentucky bid therefor the sum of THIRTY FIVE THOUSAND TWO HUNDRED ($35,200.00) DOLLARS as a whole, and no one bidding more for same, said Robert F. Simmons became the purchaser thereof as the highest and best bidder at the sum of THIRTY FIVE THOUSAND TWO HUNDRED ($35,200.00) DOLLARS, in fee simple.

In accordance with the judgment, I offered and cried the property described in Paragraph #2, Groups 1 through 8 inclusive, of the attached sale bill, first separately, then in separate groups, and then together as a whole, when and where Robert F. Simmons, 840 Barrett Avenue, Louisville, Kentucky, bid therefor the sum of ONE HUNDRED TWENTY NINE THOUSAND ($129,000.00) DOLLARS, as a whole, being the property described in Groups 1 through 8 inclusive, and no one bidding more for same, said Robert F. Simmons became the purchaser thereof as the highest and best bid at the sum of ONE HUNDRED TWENTY NINE THOUSAND ($129,000.00) DOLLARS, in fee simple.

In accordance with the judgment, I then offered and cried the property described in Paragraph 3, Groups 1 through 3 inclusive, of the attached sale bill, first separately, then in separate groups, and then together as a whole, when and where Richard K. Fenley Corporation, 7562 Dixie Highway, Pleasure Ridge Park, Kentucky, bid therefor the sum of FORTY TWO THOUSAND FIVE HUNDRED ($42,500.00) DOLLARS as a whole, being the property described in Groups 1 through 3 inclusive, and no one bidding more for same, the said Richard K. Fenley Corporation, became the purchaser thereof, as the highest

and best bid at the sum of FORTY TWO THOUSAND FIVE HUNDRED ($42,500.00) DOLLARS, in fee simple.

In accordance with the terms of the sale the following deposits were made by the purchasers, same to be applied on the sale price:

1. Robert F. Simmons, deposited $16,420.00, being 10% of the sale price on the property described in Paragraphs 1 and 2 of the attached sale bill.

2. Richard K. Fenley Corporation deposited $4,250.00, being 10% of the sale price on the property described in Paragraph 3 of the attached sale bill.

The above amounts have been deposited to the account of Jack E. Mudd, Commissioner, with the First National Lincoln Bank, subject to further orders of this Court.

The following costs have been incurred pertaining to this sale, same to be taxed as costs:

Commissioner's bond, premium	100.00
Printed Sale Bills	31.50
Appraisal	400.00
Advertising in "Louisville Times"	243.04
Total	$774.54

Said property sold as above reported, was appraised according to law by Allan Nash and John M. Prood, as per appraisement heretofore filed herein.

Your Commissioner files herein an affidavit of publication showing legal advertisement of the above sale as hereinabove reported.

Your Commissioner further files herewith the bid sheet together with the report thereof setting forth bid as made on the above property sold.

Total Sale Price — $206,700.00

Respectfully Submitted,

Jack E. Mudd, Commissioner

Report of Sale

JUDICIAL SALE

REAL ESTATE

UNITED STATES DISTRICT COURT

For the Western District of Kentucky

No. 4392-A

Fortner Enterprises, Inc.

vs.

U. S. Steel Homes Credit Corp.

By virtue of a judgment rendered in the above cause the undersigned, as Commissioner duly appointed by the Court, will, on

Wednesday, March 11th, 1964

about the hour of 11 o'clock, A. M. sell at public auction, to the highest and best bidder, at the Jefferson County Courthouse door, Louisville, Kentucky, in the order hereinafter set forth, the following described property situated in Jefferson County, Kentucky:

Lots 48 and 49, Golden Meadows, Section 1-B, Plat and Subdivision Book 15, Page 33 in the office of the Jefferson County Court Clerk, Kentucky.

Lots 78, 412 and 478, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2, in the clerk's office aforesaid.

1. The above described lots with improvements thereon will be offered first separately and then as a whole, and the highest bid accepted either separately or as a whole, upon terms of 10% of the purchase price to be paid in cash at the time of sale and the balance to be paid on delivery of deed.

Report of Sale

2. Each of the following lots in Groups, 1 through 7 inclusive, together with the undeveloped tract, being the one lot as described in Group 8, shall be offered first separately, then in separate groups as described, then together as a whole and the highest bid accepted either as separate lots, in groups, or as a whole.

Group 1

Lot 29, Golden Meadows, Section 1-A, Plat and Subdivision Book 15, Page 1, in the office of the Clerk of the Jefferson County Court, Kentucky; Lots 22, 23, 24, 53, 54 and 55, Golden Meadows, Section 1-B, Plat and Subdivision Book 15, Page 33 in the clerk's office aforesaid; Lot 191, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2, in the clerk's office aforesaid.

Group 2

Lots 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97 and 483, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2, in the clerk's office aforesaid.

Group 3

Lots 98, 99, 100, 101, 102 and 103, Golden Meadows, Section 1-C, Plat and Subdivision Book 15, Page 42 in the clerk's office aforesaid; Lots 474, 475, 476, 479, 480 and481, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2 in the clerk's office aforesaid.

Group 4

Lots 194, 197, 198, 199, 200, 201, 203, 204, 206 and 207, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2 in the clerk's office aforesaid.

Group 5

Lots 175, 177, 178, 179, 180, 181, 183 and 184, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2 in the clerk's office aforesaid.

Group 6

Lots 213, 214, 216, 390, 405, 406, 407, 408, 409 and 411, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2, in the clerk's office aforesaid.

Group 7

Lots 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404 and 482, Golden Meadows, Section 1-D, Plat and Subdivision Book 18, Page 2 in the clerk's office aforesaid.

Group 8

Lots 418 and 419, Golden Meadows, Section 4-A, Plat and Subdivision Book 14, Page 81 in the clerk's office aforesaid, and the undeveloped tract of land designated as Parcel 5 in Section 8 of the judgment described as follows:

BEGINNING at a point in the Southerly line of the tract conveyed to Rt. Rev. John Floersch by Deed of record in Deed Book 3349, Page 439, in the Jefferson County Court Clerk's Office, said point being the Northeasterly corner of Golden Meadows, Section 4-A, as shown on the plat of same, which plat is of record in Plat and Subdivision Book 14, Page 81 in the aforementioned Clerk's office; thence with the Southerly line of the tract conveyed to the Rt. Rev. John Floersch, aforementioned, South 65 degrees 58 minutes East 756.25 feet and South 65 degrees 00 minutes East 140.97 feet, South 3 degrees 40 minutes West 386.18 feet to a corner of and in the line of the remaining lands of E. M. Houchin; thence with several lines of said Houchins, North 65 degrees 00 minutes West 691.08 feet, South 20 degrees 31 minutes West 758.26 feet, and North 63 degrees 25 minutes West 321.80 feet to the Southeasterly corner of Golden Meadows, Section 4-A hereinabove mentioned; thence with several lines of said Golden Meadows, Section 4-A as follows: North 20 degrees 31 minutes East 384.74 feet, North 69 degrees

01 minutes West 140.0 feet, North 20 degrees 31 minutes, East 60.0 feet, South 69 degrees 01 minutes East 140.0 feet, and North 20 degrees 31 minutes East 652.94 feet to the place of beginning.

3. Each of the following lots in Groups 1 through 3 inclusive, shall be offered first separately, then in separate groups as described, and then together as a whole and the highest bid accepted either as separate lots, in groups, or as a whole.

Group 1

Lots 360 and 362, Golden Meadows, Section 2-B-1, Plat and Subdivision Book 15, Page 14 in the office of the Clerk of Jefferson County Court; Lots 326, 327, 350, 351, 352 and 369, Golden Meadows, Section 2-B-2, Plat and Subdivision Book 16, Page 41 in the Clerk's office aforesaid.

Group 2

Lots 318, 320, 321, 322, 329, 330, 331, 332, 333, 334, 346 and 347, Golden Meadows, Section 2-B-2, Plat and Subdivision Book 16, Page 41 in the clerk's office aforesaid.

Group 3

Lots 298, 299, 300, 301, 302, 303, 337 and 338, Golden Meadows, Section 2-B-2, Plat and Subdivision Book 16, Page 41 in the clerk's office aforesaid.

Terms of Sale

Purchaser of property described in the above groups, either separately or as a whole, shall pay in cash; 10% of the purchase price at time of sale and 20% of purchase price on delivery of deed, and the balance 18 months from date of deed.

Purchaser shall be required to execute bond with good surety for the deferred payment, bearing interest at the rate of six (6) percent per annum, from date of sale, and a lien shall be retained upon the property as additional

security, with privilege of prepayment in cash before maturity, with interest accrued thereon.

Purchaser shall have further privilege of securing release of said lien on any of individual lots by paying, with interest, its pro-rata portion of the purchase price of which the lot to be released is a part.

Group 8 and each of other lots is indivisible.

Amount to be raised is $290,213.19.

Property shall be sold free and clear of all liens, and encumbrances except, State, County and School taxes, payable in the years 1962, 1963 and 1964, and all taxes thereafter which purchaser shall assume and agree to pay, and further subject to existing easements and restrictions of record and applicable zoning laws.

Jack E. Mudd,
Commissioner

Albert F. Reutlinger,
Attorney

AGREED ORDER.

Upon agreement of counsel for the respective parties and the Court being sufficiently advised,

IT IS HEREBY ORDERED that the depositions of Richard C. Dyas, William H. Lang, and Benjamin L. Rawlins may be taken at the offices of U. S. Steel Homes Credit Corporation on April 6, 1964 beginning at 10:00 A.M. and continuing thereafter and from time to time thereafter until said depositions are completed.

IT IS FURTHER ORDERED that the following described documents should be produced by the respective witness having custody of same:

1. Minute Books of U. S. Steel Homes Credit Corporation from the date of its formation to the date of the deposition.

2. Those portions of the Minute Books of United States Steel Corporation which pertain to the formation of and operations of U. S. Steel Homes Credit Corporation.

3. The annual and semi-annual reports of National Homes Corporation identified in the answer of U. S. Steel Homes Credit Corporation to Interrogatory 3 propounded by the Plaintiff.

4. The financial statements furnished the Federal Housing Administration and the Federal Nation Mortgage Association by U. S. Steel Homes Credit Corporation which were identified in U. S. Steel Homes Credit Corporation's Answer to Interrogatory 4 propounded by the plaintiff.

/s/ Brooks
Judge

/s/ Kenneth L. Anderson
Attorneys for Plaintiff

/s/ Albert F. Reutlinger
Attorneys for Defendants

ORDER.

On October 15, 1965 this action came on for hearing on defendants' motions (1) for cost bond, and (2) to separate the issue of liability from the issue of damages.

Counsel having been heard and the Court being advised.

IT IS ORDERED

(1) Defendants' motion for bond for the defendants' cost herein expended in the event the defendants recover their costs from plaintiff is sustained and such bond is fixed in the amount of $500.00.

(2) Defendants' motion to separate the issue of liability from the issue of damages is hereby overruled; however, plaintiff is directed that the Court will require, in the interest of justice, that plaintiff offer its proof in this action in the order of,

Order

(a) proof of conspiracy,

(b) proof of the fact of damage, and

(c) proof of the actual damage suffered.

Any requested deviation from the above order of proof will be allowed during trial only on motion before being offered.

IT IS FURTHER ORDERED that this case is set for trial to a jury on February 14, 1966, at 9:30 A.M., and that the following terms shall apply,

(1) Fifteen days before trial the parties shall (a) exchange a list of special damages if any such damages are claimed, (b) exchange a list of witnesses who may testify, and (c) produce for inspection by opposing party all exhibits that are to be placed in evidence. Unless written objection to the authenticity of an exhibit is made to the Court five days before trial the authenticity of the exhibit is admitted. In the absence of good cause no witness will be permitted to testify and no exhibit can be placed in evidence except upon the terms of this Order.

(2) Fifteen days before trial the parties shall meet for a final discussion of (a) possibility of a settlement, and (b) preparation of a written stipulation of all possible facts.

(3) Seven days before trial, plaintiff's counsel will submit to the Court proposed instructions with right of defendant's counsel to submit to the Court proposed instructions, if any, four days before trial.

(4) Seven days before trial, plaintiff's counsel shall submit memorandum brief on any unusual problems anticipated to arise in the trial of the action and defendants' counsel may, within four days, reply thereto should he desire.

October 18, 1965

/s/ James F. Gordon, Judge
United States District Court

NOTICE—MOTION—ORDER.

TO:

Mr. Albert F. Reutlinger
501 South Second Street
Louisville, Kentucky
Attorneys for Defendants

Take notice that the plaintiff, by counsel, will make the motion and tender the Order on Friday, January 21, 1966 at 9:30 A.M. in the courtroom of the above Court.

MOTION

Comes the plaintiff, by counsel, and moves the Court to enter the Order set forth below.

/s/ Kenneth L. Anderson
Attorneys for Plaintiff

ORDER

Motion having been made and the Court being sufficiently advised,

IT IS HEREBY ORDERED that the attached Amended Complaint be filed.

/s/ James F. Gordon
Judge

AMENDED COMPLAINT.

Comes the plaintiff, Fortner Enterprises, Inc., and for its Amended Complaint against the defendants herein states:

1. That it repeats and reiterates as if fully copied herein all paragraphs of the Complaint as originally filed.

2. In addition to the loan agreement and mortgage described in paragraphs 14 through 16 of the original Complaint, on August 2, 1961 this plaintiff, in order to further avail itself of the services of U. S. Steel Homes Credit Corporation, entered into an additional contract with the U. S. Steel Homes Credit Corporation by the terms of which said defendant agreed to loan this plaintiff certain sums

of money, one of the conditions of that agreement being that plaintiff was required " . . . to complete development of the premises and to erect on each of said lots free from all mechanic's liens prefabricated dwelling houses manufactured by the United States Steel Homes Division, U. S. Steel Corporation. (A copy of said loan agreement is attached hereto and made a part hereof as if fully copied herein and is marked Exhibit D.) .

3. The aforesaid loan agreement of August 2, 1961 was executed at the time plaintiff had just begun building homes in said housing development. The defendant, U. S. Steel Homes Division, U. S. Steel Corporation, furnished this plaintiff with faulty, defective and unusable material for the construction of the houses to be erected on the lots which were the subject matter of the loan agreement of August 2, 1961. It was anticipated by the terms of the aforementioned loan agreement that this plaintiff would construct approximately thirty-two (32) houses on the thirty-two lots described in said loan agreement in addition to the one hundred eighty seven (187) houses which were to be constructed on the lots and land described in the loan agreement of October 28, 1960. After construction of seventy (70) houses on lots located in the description of the October 28, 1960 loan agreement or the August 2, 1961 loan agreement, because of the faulty and defective material furnished by the defendant, United States Steel Homes Division, U. S. Steel Corporation, this plaintiff has been unable to complete said project.

4. In order to effectuate the aforementioned contract, combination and conspiracy the defendant, U. S. Steel Homes Credit Corporation threatened and continued to foreclose the mortgages held by it under the terms of the aforementioned loan agreements, even though plaintiffs inability to continue performance was directly caused by the illegal acts of the defendant. The defendant U. S. Steel Homes Credit Corporation has since the filing of the original Complaint herein foreclosed upon the property

which was the subject matter of the loan agreements described above and in the original Complaint and has caused said property to be sold at a foreclosure sale for the sum of $208,562.69. The property upon which said defendant foreclosed had a fair market value of $261,300.00, as of the date of said foreclosure sale, and the aforesaid defendants as a result of their illegal acts have caused the plaintiff herein to be damaged in addition to plaintiff's other damages in the difference between the sale price in said foreclosure action and the fair market value of said property, or $52,737.31. This action has resulted in irrepairable injury, harm and damage to the plaintiff as alleged in plaintiff's original Complaint filed herein. (A copy of the mortgage dated August 2, 1961, is attached hereto and is marked Exhibit E.)

5. As a direct and proximate result of the contract, combination and conspiracy and violation of the antitrust laws set forth herein and in the original Complaint filed herein, the defendants have caused the plaintiff:

A. To purchase United States Steel Homes at unreasonably high prices.

B. To expend additional sums on each house built to date to repair or replace the damage caused by the faulty, defective and unusable material furnished by United States Steel Homes Division, United States Steel Corporation.

C. To be delayed in the completion of the homes planned to be built in the aforesaid development to the extent that plaintiff is now unable to go forward with the development.

D. To have lost profits on homes already built and to lose profits on the homes contemplated by the parties to be built which plaintiff has been unable to build, both in the amount of approximately $900.00 per each of the 219 houses, or a total of $197,100.00.

E. To have its reputation as a developer and builder irreparably damaged due to the inferior homes built as a result of the defective materials furnished plaintiff.

F. To be unable to purchase prefabricated steel homes or their component parts from other manufacturers.

G. To have caused the property of the plaintiff to be sold at a value below the fair and reasonable market value of said property at a loss to the plaintiff of $52,737.31.

6. Plaintiff further states that defendant, U. S. Steel Homes Credit Corporation is claiming as of May 12, 1965 that plaintiff owes said defendant a balance of principal and accrued interest of $88,733.60. Said alleged claim against the plaintiff was caused and brought about by the illegal conduct of the defendants as set forth herein and in the original Complaint filed herein and said defendants should be further barred from asserting said claim against the defendant.

WHEREFORE, plaintiff, Fortner Enterprises, Inc. demands:

1. Judgment against the defendants, United States Steel Corporation and United States Steel Homes Credit Corporation for treble the sum of $249,837.31, being the amount of damages plaintiff has incurred as a result of the defendants illegal acts, a reasonable fee for the services of its attorneys in prosecuting this action, and its costs herein expended.

2. For a decree against the defendants permanently enjoining and prohibiting their enforcement of the provision or provision of the aforementioned loan agreement which require plaintiff to construct the prefabricated houses in this development exclusively out of products furnished by United States Steel Homes Division, United States Steel Corporation.

3. That the plaintiff be awarded all other just and proper relief to which it may appear entitled.

4. That the alleged claim of the defendant, U. S. Steel Homes Credit Corporation against the plaintiff be held null, void and unenforceable.

/s/ Kenneth L. Anderson
/s/ A. Scott Hamilton, Jr.

EXHIBIT D.

LOAN AGREEMENT

THIS AGREEMENT, made this 2 day of August, 1961, by and between FORTNER ENTERPRISES, INC., a Kentucky corporation, (hereinafter called the "Borrower") and U. S. Steel Homes Credit Corporation, a Delaware corporation, having an office in New Albany, Indiana, (hereinafter called the "Lender");

WITNESSETH:

WHEREAS, Borrower has acquired, or will acquire, fee simple title to thirty-two (32) fully developed building lots situated in Golden Meadows Subdivision, Jefferson County, Kentucky, more particularly described in the mortgage of even date herewith, (hereinafter referred to as the "Premises" and/or "Lots"); and,

WHEREAS, Borrower intends to construct on each of said Lots a single-family dwelling utilizing products of United States Steel Homes Division, United States Steel Corporation; and

WHEREAS, Borrower has applied for a loan to assist in refinancing indebtedness presently existing against said Lots, to provide working capital funds, and to finance the construction of dwellings on said Lots;

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and of other valuable considerations, the parties hereto agree as follows:

PART A.

1. The Borrower agrees to take and the Lender agrees to make a loan in the principal sum of FOUR HUNDRED SIXTY-FIVE THOUSAND THREE HUNDRED FIFTY DOLLARS ($465,350.00), to be advanced as hereinafter provided, said Loan being evidenced by:

a. Promissory Note of even date in the principal amount of FIFTY-NINE THOUSAND DOLLARS ($59,000.00), maturing December 31, 1962, and bearing interest on all disbursed and unpaid amounts thereof at the rate of six per centum (6%) per annum, payable monthly on the first day of each month beginning September 1, 1961, (said note being hereinafter referred to as the "Land Note");

b. Promissory Note of even date in the principal amount of FOUR HUNDRED THREE THOUSAND FOUR HUNDRED DOLLARS ($403,400.00), maturing December 31, 1962, and bearing interest on all disbursed and unpaid amounts thereof at the rate of six per centum (6%) per annum, (said note being hereinafter referred to as the "Construction Note");

c. Promissory Note of even date in the principal amount of TWO THOUSAND NINE HUNDRED FIFTY DOLLARS ($2,950.00), maturing December 31, 1962, and bearing no interest on and prior to said maturity date, but bearing interest after said maturity date at the rate of six per centum (6%) per annum, payable monthly on the first day of each month, (said note being hereinafter referred to as the "Collateral Note"); and

d. Mortgage Deed of even date herewith conveying as security for the Land Note, Construction Note, and Collateral Note, the above described Premises, which Mortgage shall at all times constitute a valid and the

only lien on the aforesaid Premises, except for taxes and assessments not overdue.

2. The Borrower agrees to do and perform the following acts and things:

a. To erect on the Lots, free from all mechanics' liens, on or prior to the maturity of the Land Note, the Construction Note, and the Collateral Note, a total of not less than twenty-seven (27) single-family dwellings consisting primarily of components produced and furnished by United States Steel Homes Division, United States Steel Corporation, (hereinafter called the "dwelling house") and to construct said dwelling houses in accordance with all applicable ordinances and statutes, use restrictions of record and in accordance with the requirements of all regulatory authorities and in conformity with the requirements of the Federal Housing Administration (hereinafter referred to as "FHA") and/or the Veterans Administration (hereinafter referred to as "VA");

b. To furnish Lender with satisfactory evidence that Workmen's Compensation Insurance coverage of Borrower and/or its subcontractors required by applicable law has been provided, together with certificates evidencing public liability and property damage insurance in the amounts of $100,000.00 each person and $300,000.00 each accident for injuries to persons, and $50,000.00 each accident for damage to property.

c. To furnish fire and extended coverage insurance on each of the dwelling houses, in amount, form and in companies satisfactory to Lender, which insurance shall be payable to the Borrower, with standard mortgagee endorsement attached making loss payable to the Lender or its assigns as mortgagee;

d. To pay all taxes and assessments which are delinquent or in collection;

e. To allow Lender and its agents, until such time as the Loan is paid in full, the right of entry and free access to the Premises, the right to inspect all work done, labor performed and materials furnished, and to inspect all books, contracts and records of Borrower insofar as the same relate to the Premises;

f. To furnish Lender, upon request, a current statement of financial condition with such supporting detail as may be required by Lender;

g. To indemnify and hold and save harmless Lender from any and all loss, cost, damage, liability and expense, which it may suffer or incur, by reason of the perfecting of statutory liens, against any or all of the premises described in the said mortgage, on account of work or labor performed or on account of the furnishing of machinery, material and fuel;

h. To pay to the Lender as hereinabove provided, a Service Fee of one-half of one per centum (½ of 1%) of the total aggregate amount of the Land Note and the Construction Note.

3. The Lender may require the Borrower to obtain and attach to each application for an advance on account of the Loan, acknowledgements of payment and releases of liens down to the time of the making of such advance, from all contractors and subcontractors and materialmen covering all work, labor, machinery, materials and fuel, done, performed or furnished in connection with the construction of any of the said dwelling houses.

4. Upon the occurrence of any of the following events:

a. The Borrower shall at any time prior to the completion of the said dwelling houses abandon the installation and/or construction thereof or shall cease work thereon for a period of more than seven (7) days, stoppage by reason of strikes, labor disputes, shortages of materials and acts of God and other matters beyond its control excepted;

b. An order in aid of execution or attachment shall be served upon the Lender by any creditor of the Borrower and not released within five (5) days from the date thereof;

c. The Borrower shall fail to commence the construction of said dwelling houses within thirty (30) days after the date of the Notes and Mortgage, or within such additional number of days as the Lender may grant in writing;

d. An event of default as defined in the said Mortgage shall occur and subsist for the period of time, if any, therein specified in respect thereof, and the Lender shall take any action to enforce its rights under the said Mortgage or the Notes secured thereby; or

e. The Borrower shall otherwise fail to comply with the terms of this Agreement or with the terms and provisions of the Notes or the Mortgage;

then and in any such event, at the option of the Lender all obligation on its part to make further advances on account of the Loan shall cease, and the Lender may enter into possession of the premises and perform any and all work and labor necessary to erect said dwelling houses substantially according to the applicable plans and description of materials and employ watchmen to protect the premises.

5. The Lender does not assume and is hereby expressly released and discharged from any and all liability and responsibility whatsoever, which might or could arise out of the disbursement of the Loan or as to the method, manner or application of such disbursement, or as to mechanics' or materialmen's liens or any other liens whatsoever which might attach to or be filed against the aforesaid premises.

6. Within ten (10) days from the date of the Mortgage, and in any event prior to the Lender's disbursing any portion of the Loan to the Borrower, theBorrower at its own cost and expense, will cause to the issued and delivered by a qualified title insurance company (hereinafter called

the "Title Company") to the Lender a mortgagee's policy of title insurance in standard ATA form incorporating those provisions set forth in Exhibit "A" attached hereto and made a part hereof. At the option of the Lender, all disbursements of the said Loan may be made through and under the supervision of Title Company and the Borrower agrees to do all acts and things necessary to comply with all conditions contained in the said policy, so that the Lender shall be entitled to the full benefit of the said policy with respect to all amounts disbursed on account of the said Loan.

PART B.

1. The proceeds of the Land Note shall be disbursed as follows:

a. The first advance shall be in the amount of Two Thousand Three Hundred Twelve Dollars ($2,312.00), which sum representing the Service Fee due by Borrower to Lender under the provisions of Item 2. h. of PART A. above shall be paid by Lender to itself for the account of Borrower in payment of said Fee, and shall be made at the time of loan closing.

b. The remaining proceeds of the Land Note amounting to Fifty-six Thousand Six Hundred Eighty-eight Dollars ($56,688.00) shall be paid by Lender to the Title Company to be disbursed by it in payment of the oustanding indebtedness against the mortgaged premises amounting to Twenty-five Thousand Eight Hundred Twenty-five and 87/100 Dollars ($25,825.87) with the balance of said funds to be disbursed to Borrower, said disbursements to be made by Title Company simultaneously with the recordation of the Mortgage Deed of even date herewith to Lender covering the Premises and the issuance of the mortgagee's policy of title insurance referred to in Item 6. of PART A. above.

PART C.

1. For the purpose of allocating the proceeds of the Construction Note to be advanced to the Borrower hereunder, the maximum amount of such proceeds to be allocated to each of the proposed Lots covered by this Agreement shall be, as to each said sublot, whichever amount is the lesser of either that amount set forth in Column (3) on Exhibit "B" attached hereto, or that amount arrived at by subtracting the pro-rata share of the proceeds of the Land Note allocated each of said sublots as set forth in Column (2) of said Exhibit "B", from eighty-five per centum (85%) of the valuation of the particular house and lot established by the FHA as the basis for the Commitment to Insure or VA Certificate of Reasonable Value issued therefor.

2. Prior to Lender's obligating itself to make payment of any house shipped for account of Borrower and prior to Lender's making the first or any subsequent advance of the amount of the proceeds of the Loan allocated to a given house and Lot, Lender shall be in receipt of:

a. A copy of the FHA Commitment to Insure or VA Certificate of Reasonable Value applicable thereto; and

b. Satisfactory evidence that the house and lot in respect of which advance of loan proceeds is requested has been sold, that the purchaser thereof has made a cash deposit of not less than Ninety-nine Dollars ($99.00), and that a permanent investor has approved the purchaser as mortgagor in the amount of the mortgage to be originated and agrees to purchase said mortgage after it is duly endorsed for insurance by the FHA or guaranteed by the VA:

3. The proceeds of the Construction Note as allocated to each of the proposed Lots shall be disbursed as follows:

a. The first advance shall be made when as to a given house the concrete slab is installed and Lender

is in receipt of (a) a sworn statement by a Registered Engineer showing that the slab in question is located wholly within the lot lines in accordance with the restrictions of record and zoning ordinances and (b) a copy of the FHA or VA First Compliance Inspection Report showing no exceptions. The amount of the first advance shall be One Thousand Dollars ($1,000.00);

b. The second advance shall be made when as to a given house Lender is in receipt of a copy of the FHA or VA Second Compliance Inspection Report showing no exceptions. The second advance shall be One Thousand Dollars ($1,000.00) plus a sum equal to the purchase price of the dwelling house package, including sales tax and freight, as shown by the applicable Treasury Invoice of the United States Steel Homes Division, United States Steel Corporation. From the amount of each such second advance Lender shall pay on behalf of Borrower the amount shown to be due by said Treasury Invoice, to United States Steel Homes Division, United States Steel Corporation, for the account of the Borrower;

c. The third advance shall be made when as to a given house the finished floor is laid, interior trim installed, kitchen units installed, furnace and hot water heater installed, bath fixtures installed, and interior painting is completed. The third advance shall be an amount equal to ninety per centum (90%) of the maximum amount of the Construction Note so allocated less the amounts of the first two advances described above;

d. The final advance on account of the maximum amount of the proceeds of the Loan so allocated shall be one hundred per centum (100%) of said proceeds less the aggregate total of the three previous advances and shall be made when as to a given house all construction is completed and the Lender is in receipt of

the final FHA or VA Compliance Inspection Report without exceptions save for those items for which suitable escrows have been established with the FHA or VA.

PART D.

1. Borrower's agreements contained in paragraph 2.b. of PART A. hereof constitute, and hereby are declared to constitute, an essential part of the consideration to Lender for the execution and delivery of this Loan Agreement, and the disbursement of proceeds of the Land Note and Construction Note as above provided.

2. The principal amount of the Collateral Note shall be disbursed concurrently with the execution and delivery of said note, shall be disbursed by Lender to itself for the account of Borrower, and shall be held in escrow by Lender for the purposes hereinafter stated and none other:

a. At such time on or before the maturity of said Collateral Note as Borrower shall have fully complied with its agreements contained in said paragraph 2. a. of PART A. hereof, then Lender shall promptly apply all such escrowed proceeds of the Collateral Note to the repayment of such note;

b. In the event such escrowed proceeds of the Collateral Note have not become qualified for application to the repayment of such note on or before the maturity of such note, as provided by sub-paragraph "a", above, then on the day following the maturity of said Collateral Note the Lender shall pay all such escrowed proceeds to itself, for its own account, as liquidated damages specifically for the breach of Borrower's agreements contained in the aforesaid paragraph 2. b. of PART A. hereof, without prejudice, however, to any of the rights of Lender for repayment of the Land Note, Construction Note, and Collateral Note, and interest thereon; and thereafter all right, title and interest of Borrower

in and to such escrowed proceeds of the Collateral Note shall cease and determine, and shall be of no further force and effect whatever.

3. In no event shall the liability of Borrower under the Land Note, Construction Note, or Collateral Note exceed amounts actually disbursed and unpaid, and interest thereon.

PART E.

1. An individual written release of lien of mortgage from U. S. Steel Homes Credit Corporation for each of the lots duly and regularly platted within the premises described in said Mortgage shall be prepared in proper form and deposited with Title Company within sixty (60) days from the date of said Mortgage. Upon proof that the shell of a prefabricated single-family dwelling house manufactured by the United States Steel Homes Division of United States Steel Corporation has been erected by Borrower upon any given lot, then upon payment by Borrower to Title Company for the account of Lender of:

a. The sum of Two Thousand Two Hundred Dollars ($2,200.00) in partial repayment of the proceeds of the Land Note until said note is paid in full, and thereafter in partial repayment of the proceeds of the Collateral Note; and

b. An amount aggregating that portion of the proceeds of the Construction Note and interest accrued thereon advanced for construction of a dwelling on said lot;

the applicable release of lien of mortgage shall be placed on record in the Records of Mortgages for Jefferson County, Kentucky.

2. This agreement, together with the notes and mortgage hereinabove described, constitute the entire agree-

ment between the Borrower and the Lender and no representations or agreements, express or implied, have been made to or with the Borrower not herein contained. This Agreement shall not be amended or modified, nor may any of its terms or conditions be waived, except by an instrument in writing executed in the name of and on behalf of the Lender by one of its officers thereunto duly authorized.

3. Any notice or demand upon the Borrower shall be deemed to have been sufficiently given or served for all purposes hereof if mailed to Borrower by registered or certified mail addressed to 4125 South Third Street, Louisville, Kentucky, or such other address as the Borrower may furnish to the Lender for such purpose. Any notice or demand upon the Lender shall be deemed to have sufficiently been given or served for all purposes hereof if delivered personally to its Vice President or mailed to it for the attention of its Vice President by registered mail addressed to it at Mutual Trust and Deposit Building, 322 Pearl Street, New Albany, Indiana, or at such other address as the Lender may furnish the Borrower for such purpose.

4. No right, interest or benefit of the Borrower hereunder may be assigned or otherwise transferred unless the written consent of the Lender shall first be obtained. Nothing in this Agreement, express or implied, shall confer upon any person, firm or corporation, other than the Lender, together with its successors or assigns, and the Borrower, together with its successors or assigns, subject to the limitation contained in the next preceding sentence, any right, remedy, or claim, legal or equitable, hereunder or by reason hereof; this Agreement and all of its covenants and conditions being intended to be and being for the sole and exclusive benefit of such persons specified as aforesaid.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate the day and year first above written.

FORTNER ENTERPRISES, INC.

By _____

President

_____

Secretary

U. S. STEEL HOMES CREDIT CORPORATION

By _____

Vice President

_____

Assistant Secretary

EXHIBIT "A"

(Attached to and made a part of Loan Agreement dated August , 1961, between Fortner Enterprises, Inc. and U. S. Steel Homes Credit Corporation)

Title Policy Provisions

The Mortgage Deed executed contemporaneously herewith shall be insured to the amount of the Loan as a first and valid lien against the property therein described except for the following:

1. Taxes and assessments not yet due and payable.

2. Such state of facts as would be disclosed by an accurate survey and inspection of the premises.

NOTE: Subject to other provisions of the Policy, the maximum liability of the insured may be limited to not less than the following respective amounts for the several lots designated on any duly recorded plat of the premises, namely:

Each Lot — $14,450.00

NOTE: The liability of the insurer under the policy shall be limited to actual amounts disbursed on the mortgage loan which the above referred to Mortgage Deed secures, but will increase as each disbursement is made up to the face amount of the policy.

EXHIBIT "B"

(Attached to and made a part of Loan Agreement dated August, 1961, between Fortner Enterprises, Inc. and U. S. Steel Homes Credit Corporation)

Lot No.	Maximum Estimated VA/FHA Valuation	(1) Total Max. Loan (85% of Valuation)	(2) Amount of Loan Allocated to Land Note	(3) Amount of Loan Allocated to Construction Note
Each Lot	$17,000.00	$14,450.00	$1,845.00	$12,605.00

MORTGAGE NOTE

$403,400.00

Louisville, Kentucky
August 2, 1961

On or before December 31, 1962, for value received, the undersigned promises to pay to the order of U. S. STEEL HOMES CREDIT CORPORATION, a Delaware corporation, at its office in the City of New Albany, Indiana, or at such other place as the holder hereof may designate from time to time, in lawful money of the United States of America, the principal sum of FOUR HUNDRED THREE THOUSAND FOUR HUNDRED DOLLARS ($403,400.00), with interest from the date hereof on the unpaid principal advanced at the rate of six per centum (6%) per annum.

In certain events defined in the Mortgage hereinafter mentioned and in certain events defined in that certain Loan Agreement of even date herewith between the undersigned and U. S. Steel Homes Credit Corporation, the principal of and interest on this Note may be declared and become due and payable before the stated maturity hereof by any legal holder hereof, in the manner and with the

effect set forth in said Mortgage, hereupon the undersigned agrees to make payment of this Note accordingly.

In the event that any advances on account of the principal of this Note shall be made by payee subsequent to the occurrence of an event of default as defined in the said Mortgage or the said Loan Agreement, the making of such advances shall not be construed as a waiver of any such default, shall not in any manner alter, modify or amend any of the terms or provisions hereof and shall not affect or modify the obligation of the undersigned to make payment of the principal of and interest on this Note in accordance with its terms.

The maker and endorsers and all parties to this instrument severally waive presentment for payment, protest, notice of non-payment of this instrument, demand, and all legal diligence in enforcing collection.

This Note is secured by a Mortgage of even date herewith from the undersigned to U. S. Steel Homes Credit Corporation, secured by real estate situated in the County of Jefferson and State of Kentucky, to which Mortgage reference is made for a description of the security and rights of the holder of this Note in respect thereof.

FORTNER ENTERPRISES, INC.

By _____
President

ATTEST:

_____
Secretary

MORTGAGE NOTE

$59,000.00 Louisville, Kentucky
August 2, 1961

On or before December 31, 1962, for value received, the undersigned promises to pay to the order of U. S. STEEL

Amended Complaint

HOMES CREDIT CORPORATION, a Delaware corporation at its office in the City of New Albany, Indiana, or at such other place as the holder hereof may designate from time to time, in lawful money of the United States of America, the principal sum of FIFTY-NINE THOUSAND DOLLARS ($59,000.00), with interest at the rate of six per centum (6%) per annum, computed from the date of each advance, said interest being payable on the first day of each month beginning September 1, 1961.

In certain events defined in the Mortgage hereinafter mentioned and in certain events defined in that certain Loan Agreement of even date herewith between the undersigned and U. S. Steel Homes Credit Corporation, the principal of and interest on this Note may be declared and become due and payable before the stated maturity hereof by any legal holder hereof, in the manner and with the effect set forth in said Mortgage, whereupon the undersigned agrees to make payment of this Note accordingly.

In the event that any advances on account of the principal of this Note shall be made by payee subsequent to the occurrence of an event of default as defined in the said Mortgage or the said Loan Agreement, the making of such advances shall not be construed as a waiver of any such default, shall not in any manner alter, modify or amend any of the terms or provisions hereof and shall not affect or modify the obligation of the undersigned to make payment of the principal of and interest on this Note in accordance with its terms.

The maker and endorsers and all parties to this instrument severally waive presentment for payment, protest, notice of non-payment of this instrument, demand and all legal diligence in enforcing collection.

This Note is secured by a Mortgage of even date herewith from the undersigned to U. S. Steel Homes Credit Corporation, secured by real estate situated in the County of Jefferson and State of Kentucky, to which Mortgage

reference is made for a description of the security and rights of the holder of this Note in respect thereof.

FORTNER ENTERPRISES, INC.

By _____
President

ATTEST:

_____
Secretary

MORTGAGE NOTE

$2,950.00 Louisville, Kentucky
August 2, 1961

On or before December 31, 1962, for value received, the undersigned promises to pay to the order of U. S. STEEL HOMES CREDIT CORPORATION, a Delaware corporation, at its office in the City of New Albany, Indiana, or at such other place as the holder hereof may designate from time to time, in lawful money of the United States of America, the principal sum of TWO THOUSAND NINE HUNDRED FIFTY DOLLARS ($2,950.00), without interest. After maturity, interest shall be paid monthly on the first day of each month at the rate of six per centum (6%) per annum on all amounts which shall have been disbursed hereon and remain unpaid.

In certain events defined in the Mortgage hereinafter mentioned and in certain events defined in that certain Loan Agreement of even date herewith between the undersigned and U. S. Steel Homes Credit Corporation, the principal of and interest on this Note may be declared and become due and payable before the stated maturity hereof by any legal holder hereof, in the manner and with the effect set forth in said Mortgage, whereupon the undersigned agrees to make payment of this Note accordingly.

In the event that any advances on account of the principal of this Note shall be made by payee subsequent to

the occurrence of an event of default as defined in the said Mortgage or the said Loan Agreement, the making of such advances shall not be construed as a waiver of any such default, shall not in any manner alter, modify or amend any of the terms or provisions hereof and shall not affect or modify the obligation of the undersigned to make payment of the principal of and interest on this Note in accordance with its terms.

The maker and endorsers and all parties to this instrument severally waive presentment for payment, protest, notice of non-payment of this instrument, demand, and all legal diligence in enforcing collection.

This Note is secured by a Mortgage of even date herewith from the undersigned to U. S. Steel Homes Credit Corporation, secured by real estate situated in the County of Jefferson and State of Kentucky, to which Mortgage reference is made for a description of the security and rights of the holder of this Note in respect thereof.

FORTNER ENTERPRISES, INC.

By _____
President

ATTEST:

_____
Secretary

CERTIFICATE

U. S. Steel Homes Credit Corporation
Mutual Trust & Deposit Building
322 Pearl Street
New Albany, Indiana

The undersigned, as the duly elected, qualified and acting Secretary of Fortner Enterprises, Inc., a Kentucky corporation, hereby certifies as follows:

Amended Complaint

1. That at a meeting of the Board of Directors of said Company which was duly called and held on , 1961, and at which a quorum was present and voted, the following resolutions were unanimously adopted, to-wit:

RESOLVED, that this Company borrower the sum of $465,350.00 from the U. S. Steel Homes Credit Corporation (hereinafter called the "Lender") and for the purpose of evidencing such loan and of providing for the security thereof, and the terms and provisions thereof, the officers of this Company and each of them be and they hereby are authorized to execute and deliver to the Lender, in form and substance satisfactory to said Lender and any one of such officers, whose approval thereof shall be conclusively evidenced by his signature thereto, the following documents and instruments, for and on behalf and in the name of this Company namely:

a. Promissory Notes, in the amount of $465,350.00, bearing interest at the rate of six per centum (6%) per annum, on the Land Note and Construction Note, and maturing December 31, 1962.

b. First mortgage on property of the Company described in Exhibit "A" attached hereto and made a part of this resolution.

c. Loan Agreement.

d. Any other contracts, agreements, assignments, chattel mortgages, stipulations or proper writings necessary to accompany the aforesaid note and mortgage as may be requested by the Lender or required by law or regulations issued by the Federal Government pursuant thereto.

RESOLVED that each of such officers be and he hereby is authorized to make due acknowledgment of his execution and delivery of any or all of the foregoing instruments, as the act and deed of this Company; and

RESOLVED that the Secretary of this Company be and he hereby is authorized and directed to prepare and

certify copies of this and the foregoing resolutions and to deliver the same to the Lender, and that the Lender be and it hereby is authorized and empowered to rely upon this and the foregoing resolutions until and unless it receives written notice to the contrary signed by the President or Secretary of this Company.

2. That the said resolutions have not been amended, modified, repealed or rescinded, are in full force and effect, and have been duly recorded in the minute book of the said Company.

3. That the following are the duly elected, qualified and acting officers of the said Company who are referred to in the foregoing resolutions and that opposite the name of each is his true and genuine signature, to-wit:

Name	Title	Signature
A. B. Fortner, Jr.	President	_____
Ruth L. Fortner	Vice President	_____
Edna B. Herberman	Secretary	_____
	Treasurer	_____
		_____
		_____

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and the seal of said Company, this day of August, 1961.

_____

Secretary of
FORTNER ENTERPRISES, INC.

EXHIBIT "A"

(Attached to and made a part of a Resolution dated , 1961, by the Board of Directors of Fortner Enterprises, Inc.)

Situate in the County of Jefferson, State of Kentucky, and being more particularly described as follows, to-wit:

PARCEL 1

Lot Number 271 as shown and designated on the plat of Golden Meadows Section 2-A as it is recorded in Plat and Subdivision Book 13, Page 97, in the office of the Clerk of the County Court of Jefferson County, Kentucky;

PARCEL 2

Lots Number 360 and 362 as shown and designated on the plat of Golden Meadows Section 2-B-1 as it is recorded in Plat and Subdivision Book 15, Page 14, in the office of the Clerk of the County Court of Jefferson County, Kentucky;

PARCEL 3

Lots Number 298, 299, 300, 301, 302, 303, 305, 307, 318, 320, 321, 322, 326, 327 329, 330, 331, 332, 333, 334, 337, 338, 346, 347, 350, 351, 352, 367, and 369 as shown and designated on the plat of Golden Meadows Section 2-B-2 as it is recorded in Plat and Subdivision Book 16, Page 41, in the office of the Clerk of the County Court of Jefferson County, Kentucky.

EXHIBIT E

MORTGAGE DEED

Book 444, Page 86

THIS MORTGAGE, between FORTNER ENTERPRISES, INC., a Kentucky corporation having a principal place of business in the City of Louisville, County of Jefferson, and State of Kentucky, GRANTOR, and U. S. Steel Homes Credit Corporation, a Delaware corporation having a place of business in the City of New Albany, County of Floyd, and State of Indiana, GRANTEE:

WITNESSETH: Whereas GRANTOR desires to secure certain obligations to GRANTEE by mortgaging certain real estate;

NOW, THEREFORE, GRANTOR, for the purposes herein described, intending to be legally bound hereby, and

in consideration of TEN and NO/100 DOLLARS ($10.00) received to its full satisfaction from GRANTEE, does hereby grant, bargain, sell, and convey to GRANTEE, its successors and assigns, the following described real estate, to-wit:

Situate in the County of Jefferson, State of Kentucky, and being more particularly described as follows, to-wit:

Book 444, Page 87

PARCEL 1

Lot Number 271 as shown and designated on the plat of Golden Meadows Section 2-A as it is recorded in Plat and Subdivision Book 13, Page 97, in the office of the Clerk of the County Court of Jefferson County, Kentucky;

PARCEL 2

Lots Number 360 and 362 as shown and designated on the plat of Golden Meadows Section 2-B-1 as it is recorded in Plat and Subdivision Book 15, Page 14, in the office of the Clerk of the County Court of Jefferson County, Kentucky;

PARCEL 3

Lots Number 298, 299, 300, 301, 302, 303, 305, 307, 318, 320, 321, 322, 326, 327, 329, 330, 331, 332, 333, 334, 337, 338, 346, 347, 350, 351, 352, 367, and 369 as shown and designated on the plat of Golden Meadows Section 2-B-2 as it is recorded in Plat and Subdivision Book 16, Page 41, in the office of the Clerk of the County Court of Jefferson County, Kentucky.

TITLE to said property having been acquired by Mortgagor by two deeds, one dated July 6, 1961, of record in Deed Book 3700, page 323, and the other dated August 2, 1961, of record in Deed Book 3705, page 6 in the aforesaid Clerk's office.

This Mortgage is made for various purposes including erecting buildings on and improving the premises described in this instrument, all as prescribed by Item 1 of KRS 376.050.

TO HAVE AND TO HOLD the said premises, with all appurtenances, to GRANTEE, its successors and assigns, with covenants of General Warranty, to secure:

FIRST: Payment of a promissory note of even date herewith executed by GRANTOR in the sum of FIFTY-NINE THOUSAND DOLLARS ($59,000.00), with interest at the rate of six per centum (6%) per annum computed from the date of each advance, said interest being payable on the first day of each month beginning September 1, 1961, it being expressly agreed in said note that said principal sum shall be due and payable on or before December 31, 1962, it being further expressly agreed therein that the whole of said principal sum then unpaid may be declared and become due and payable in the event of default as therein defined;

SECOND: Payment of a promissory note of even date herewith executed by GRANTOR in the sum of FOUR HUNDRED THREE THOUSAND FOUR HUNDRED DOLLARS ($403,400.00), with interest at the rate of six per centum (6%) per annum computed from the date of each advance, it being expressly agreed in said note that said principal sum together with said interest shall be due and payable on or before December 31, 1962, it being further expressly agreed therein that the whole of said principal sum then unpaid may be declared and become due and payable in the event of default as therein defined;

THIRD: Payment of a promissory note of even date herewith executed by GRANTOR in the sum of TWO THOUSAND NINE HUNDRED FIFTY DOLLARS ($2,950.00), without interest, it being expressly agreed in said note that said principal sum shall be due and payable on or before December 31, 1962, it being further expressly agreed therein that after maturity interest shall be due and payable monthly on the first day of each month at the rate of six per centum (6%) per annum on all amounts which shall have been disbursed thereon and remain unpaid,

it being further expressly agreed therein that the whole of said principal sum then unpaid may be declared and become due and payable in the event of default as therein defined;

FOURTH: Payment by GRANTOR to GRANTEE of all sums expended or advanced by GRANTEE pursuant to this Mortgage or the Loan Agreement entered into between the parties of even date herewith;

FIFTH: Performance of each undertaking of GRANTOR contained herein, and performance of each undertaking of GRANTOR contained in said Loan Agreement;

SIXTH: Payment by GRANTOR to GRANTEE of all other indebtedness, direct or contingent, now or hereafter owing by GRANTOR to GRANTEE.

FOR THE CONSIDERATION AFORESAID, GRANTOR covenants and agrees that:

FIRST: GRANTOR is lawfully seized in fee simple of said premises and has good right to sell and convey the same as aforesaid; said premises are free of all encumbrances, except liens for taxes and assessments not yet due and payable and any building and use restrictions of record; and GRANTOR will warrant and defend the title to the premises forever against the claims and demands of all persons whomsoever.

SECOND: GRANTOR shall keep all buildings and other insurable property now or hereafter erected or placed in or on said mortgaged property insured against fire and other hazards, as undertaken in the aforementioned Loan Agreement.

Book 444, Page 88

THIRD: GRANTOR will maintain the mortgaged property free from any waste or nuisance, and will do all things necessary to maintain said property in good condition, and will pay when due all claims for labor performed

and material furnished, and will not permit any lien of mechanics or materialmen to attach to the mortgaged property.

FOURTH: GRANTOR will pay, before they become delinquent, all taxes and assessments lawfully imposed upon the mortgaged property, and will promptly at the request of GRANTEE deliver to GRANTEE the receipt for such payment.

FIFTH: If GRANTOR fails to pay any taxes, assessments, liens, or insurance premiums when the same are due and payable, or otherwise defaults in the performance of any other covenant hereunder or under the said Loan Agreement, the security hereby created shall then become enforceable. GRANTEE may thereupon pay any such sums and perform any such covenants in respect of which there has been a default, and GRANTOR agrees promptly to repay any sums so advanced, without demand, with interest at the rate of six per centum (6%) per annum from the date of such advances, and such sums so advanced, with such interest, shall be secured hereby, but no such advance shall relieve GRANTOR of the consequences of any such default.

SIXTH: Should the security hereby created become enforceable as hereinabove provided, GRANTEE may declare all sums secured hereby immediately due and payable, and GRANTOR shall then pay said sums forthwith.

SEVENTH: Should the security hereby created become enforceable as hereinabove provided, GRANTEE may take possession of the mortgaged property, manage it and collect rents therefrom and apply same, less reasonable collection costs, upon the indebtedness hereby secured, and all leases and rents of the mortgaged property, after the security shall become enforceable, are hereby assigned and mortgaged to GRANTEE as additional security for the indebtedness secured hereby.

EIGHTH: GRANTOR will not claim the benefit of any stay, extension, appraisement, or redemption law now or at any time hereafter in effect.

PROVIDED, ALWAYS, that if GRANTOR pays to GRANTEE the principal and interest on said notes, when and as the same shall become due and payable, and pays any and all other sums payable under said notes or under this Mortgage or secured by this Mortgage, this conveyance shall thereupon become null and void, and in such case GRANTEE shall execute and deliver to GRANTOR, at GRANTOR's cost, an appropriate release and discharge of this Mortgage in form to be recorded.

IN WITNESS WHEREOF, GRANTOR in pursuance of a resolution adopted by its Board of Directors on the 20th day of July, 1961, has hereunto caused its corporate name to be affixed and these presents to be subscribed by its A. B. Fortner, Jr., President and Edna B. Herberman, Secretary this 2nd day of August, 1961.

FORTNER ENTERPRISES, INC.

By /s/ A. B. Fortner, Jr.
President

And /s/ Edna B. Herberman
Secretary

(Seal)

STATE OF KENTUCKY
COUNTY OF JEFFERSON } SS.

I, a Notary Public in and for the County and State aforesaid do certify that on this day the foregoing Mortgage from Fortner Enterprises, Inc. to U. S. Steel Homes Credit Corporation was produced before me and acknowledged and delivered before me by A. B. Fortner, Jr. as

President of Fortner Enterprises, Inc., a corporation, party thereto, to be the act and deed of said corporation by him as its President, thereunto duly authorized, and the seal of said corporation as affixed to said deed was attested and proven before me by Edna B. Herberman, as its Secretary.

Given under my hand and seal of office this 2nd day of August, 1961.

/s/ Henry B. Mann

Notary Public, Jefferson County, Kentucky

(Seal)

ANSWER TO AMENDED COMPLAINT.

The defendants and each of them, for answer to the amended complaint.

First Defense

1. Repeat and adopt by reference their earlier answer to the original complaint.

2. Deny the allegations found in Paragraph 2 of the amended complaint, except that they admit the execution and existence of the loan agreement referred to in Paragraph 2 of the amended complaint and filed therewith as Exhibit "D".

3. Deny Paragraph 3 of the amended complaint, except that they admit the loan agreement of August 2, 1961 contemplated that plaintiff would construct approximately 32 single family dwellings utilizing components produced and furnished by United States Steel Homes Division, United States Steel Corporation.

4. Deny the allegations found in Paragraph 4 of the amended complaint, except that they admit there has been a foreclosure action affecting the property, which was the subject matter of the loan agreements here involved.

5. Deny the allegations found in Paragraph 5 of the amended complaint.

6. Deny the allegations found in Paragraph 6 of the amended complaint, except that they admit the defendant U. S. Steel Homes Credit Corporation is claiming as of May 12, 1965 that the plaintiff owed it at least the sum of $88,733.60.

Second Defense

1. As to Paragraphs 2, 3, 4, 5 and 6 of the amended complaint, the defendants and each of them affirmatively plead in bar to the further prosecution of the claims made therein, the statute of limitations made and provided therefor, (15 U.S.C. 15b).

Third Defense

1. As to Paragraph 4, subparagraph G of Paragraph 5 and Paragraph 6 of the amended complaint, grounded on the illegality of the foreclosure action, the defendants and each of them plead that the point in issue giving rise to the allegations and claims for damage related thereto, has heretofore been decided in Action Number 4392-A, United States District Court for the Western District of Kentucky, at Louisville, styled Fortner Enterprises, Inc., Plaintiff v. United States Steel Homes Credit Corporation, Defendant, adversely to the renewed claims related thereto now made in the amended complaint, by a judgment entered in said Action Number 4392-A, January 15, 1964.

2. The judgment referred to in the immediately preceding paragraph is in full force and effect and is now final and binding on the parties hereto.

WHEREFORE, the defendants and each of them, pray that the complaint and amended complaint against them be dismissed, for their costs and all other relief.

Albert F. Reutlinger

MEMORANDUM IN COMPLIANCE WITH THE COURT'S PRE-TRIAL ORDER CONCERNING WITNESSES AND EXHIBITS.

The defendants, and each of them, may use as witnesses the following listed persons:

1. The officers and employees of the defendant U. S. Steel Homes Credit Corporation, whose identity and addresses were furnished in that corporation's answers to certain interrogatories numbered 2, 11 and 12, viz:

William H. Lang
Richard C. Dyas
William L. Rollins, and
William J. Leonard

2. The officers and employees of the defendant United States Steel Corporation (Homes Division, whose identify and addresses were furnished in that corporation's answers to certain interrogatories numbered 15 and 18, viz:

David H. Boyd
Harry R. Black
Stanley J. Mack
Andrew Cowart
Neil G. Day
Paul B. Grayson
George W. Rosenbarger
Edward L. Akers, Jr.
Charles L. Schultz
Meredith R. Moreillon
Robert W. Lane
Frank J. Colson
Reginald B. Wilmer
Orrin E. Barnum
William L. Lieber
Jacob H. Kestner
George L. Dannenfelser
J. Robert Thomas
Darrel E. Longest

*Grayson is incapacitated at this time. It is unlikely that he will recover in time to testify, but the defendants reserve the right to call him should he recover.

3. Innes W. Dobbins, Jr.
c/o Liberty National Bank and Trust Co.
416 West Jefferson Street
Louisville, Kentucky

Richard K. Harb
c/o Louisville Chamber of Commerce
300 West Liberty Street
Louisville, Kentucky

Charles Welch
c/o Louisville Real Estate Board
610 West Jefferson Street
Louisville, Kentucky

John R. Carpenter
821 South Second Street
Louisville, Kentucky

John E. Kennedy
2152 Old Shepherdsville Road
Louisville, Kentucky

A. B. Fortner, Jr.
4125 South Third Street
Louisville, Kentucky

Herman R. Miles
568 Garden Drive
Louisville, Kentucky

Edwin D. Horn
c/o Louisville Mortgage Service
101 West Broadway
Louisville, Kentucky

Stephen C. McCoy
c/o Louisville Title Insurance Co.
223 South Fifth Street
Louisville, Kentucky

L. E. Gardner
c/o Ernst & Ernst
Commonwealth Building
Louisville, Kentucky

John King
c/o Ernst & Ernst
Commonwealth Building
Louisville, Kentucky

Kenneth L. Anderson
Kentucky Home Life Building
Louisville, Kentucky

Henry D. Hopson
310 West Liberty Street
Louisville, Kentucky

A. Scott Hamilton, Jr.
310 West Liberty Street
Louisville, Kentucky

The defendants, and each of them, may tender as exhibits the following material:

1. Copies of documents obtained from plaintiff by virtue of its response to Interrogatory 11 propounded to it.

2. Copies of documents obtained from plaintiff by virtue of its response to Interrogatory 2a propounded to it.

3. Copies of documents obtained from plaintiff by virtue of its response to Interrogatory 3g propounded to it.

4. Copies of plaintiff's U. S. Income Tax Returns for fiscal years ending (i) June 30, 1961, (ii) June 30, 1962, and (iii) June 30, 1963 furnished by it.

5. Copies of material found in 93 individual folders, identified by lot numbers, furnished by plaintiff.

Memorandum in Compliance, Etc.

6. Plat of Golden Meadows, Section 1-A, copy attached hereto.

7. Plat of Golden Meadows, Section 1-B, copy attached hereto.

8. Plat of Golden Meadows, Section 1-C, copy attached hereto.

9. Plat of Golden Meadows, Section 4-A, copy attached hereto.

10. Plat of Golden Meadows, Section 2-A, copy attached hereto.

11. Plat of Golden Meadows, Section 2-B-1, copy attached hereto.

12. Plat of Golden Meadows, Section 2-b-2, copy attached hereto.

13. Mortgage Deed, dated October 28, 1960, copy attached hereto.

14. Mortgage Deed, dated August 2, 1961, copy attached hereto.

15. Dealer Franchise Contract dated October 31, 1960, copy attached hereto.

16. Preliminary Statement of Operations (without audit), Fortner Enterprises, Inc., July 1, 1960 to May 31, 1962, copy attached hereto (2 sheets).

17. Preliminary Balance Sheet (without audit), Fortner Enterprises, Inc., May 31, 1962, copy attached hereto.

18. Miscellaneous memoranda, letters, etc., identified below, with copies thereof in each instance attached hereto.

Letter Fortner to Day, dated September 19, 1960 (2 pages).

Memo Dyas to Lang, dated September 27, 1960 (2 pages).

Memo Day to Black, dated May 29, 1961 (2 pages).

Memo Moreillon to Akers, dated August 3, 1961, with attachment of Bolin J. Robinson charge dated July 17, 1961.

Memorandum in Compliance, Etc.

Memo Moreillon to Schultz, dated September 30, 1961.

Memo Moreillon to Schultz dated September 30, 1961 (2 pages).

Letter Akers to Miles, dated January 4, 1962 (2 pages) with attachments of 9 Bolin J. Robinson charges, each dated Deecember 8, 1961.

Letter Fortner to Day dated January 5, 1962 (3 pages).

Credit Memo dated January 10, 1962, with attachment of Bolin J. Robinson charge dated December 8, 1961.

File Memo dated February 8, 1962 (4 pages).

Memo Moreillon to Black, dated March 19, 1962 (windows).

Memo Moreillon to Black dated March 19, 1962 (doors — 2 pages).

Memo Moreillon to Black, dated March 26, 1962 (3 pages).

Credit Memo dated April 10, 1962, with attachment of Bolin J. Robinson charge dated April 6, 1962.

Memo Moreillon to Mack dated April 14, 1962.

Memo Moreillon to Mack dated April 23, 1962 (3 pages).

Memo Mack to Black, dated May 3, 1962 (5 pages).

Memo Mack to Black, dated May 7, 1962 (2 pages).

Letter Bird to Hamilton, dated May 16, 1962.

Memo Dyas to Lang, dated June 8, 1962 (3 pages).

Memo Black to Boyd, dated June 11, 1962.

Memo Schultz to Mack, dated June 18, 1962.

Albert F. Rentlinger

NOTICE.

Plaintiff, by counsel, will take notice that the defendants and each of them, at 9:30 A.M., Wednesday, July 6, 1966, in the within court, will move the Court for a summary judgment dismissing the complaint and amended complaint.

Albert F. Rentlinger

MOTION FOR SUMMARY JUDGMENT.

The defendants and each of them move the Court for a summary judgment dismissing the complaint and amended complaint, and in addition to the record herein, in support thereof, tended the affidavits of Rollins, Harb, Dobbins and Black and a Memorandum of Authority.

Albert F. Reutlinger

AFFIDAVIT OF INNES W. DOBBINS, JR.

Affiant, after being duly sworn, states that his name is Innes W. Dobbins, Jr.; that he is the Executive Vice-President of The Liberty National Bank and Trust Company of Louisville, Kentucky; that his duties are with the general administration of the Bank and with transactions involving real estate and mortgage loans. Affiant states that he has been continually employed with The Liberty National Bank and Trust Company since 1933, with duties similar to that above described, and that during the years 1960 to 1961 he was a Vice-President of said Bank.

Affiant states that for the years indicated below, the approximate dollar volume of real estate mortgages recorded in Jefferson County, Kentucky, were as follows:

1958	$140,587,500.
1959	$161,746,782.
1960	$133,316,632.
1961	$146,350,755.
1962	$177,934,000.

Affiant states that apart from the real estate mortgages above described, for the years below indicated, there were additional funds from local sources in excess of the figures below set forth, available in the Louisville-Jefferson County, Kentucky, area for financing.

1958	$186,661,000.
1959	$181,171,000.
1960	$163,330,000.
1961	$213,824,000.
1962	$204,891,000.

/s/ Innes W. Dobbins, Jr.

Subscribed and sworn to before me by Innes W. Dobbins, Jr., this 24th day of June, 1966.

/s/ Albert F. Reutlinger
Notary Public, Jefferson Co., Ky.

AFFIDAVIT OF RICHARD K. HARB.

Affiant, after being duly sworn, states that his name is Richard K. Harb, that he is the Director of the Research Division of the Louisville Chamber of Commerce, and as part of his duties in connection with his position at the Louisville Chamber of Commerce he examines and analyses statistical data in connection with census, population, housing and trade patterns of Louisville and Jefferson County, Kentucky, including, but not by way of limitation, the examination and analysis of material and information furnished by the United States Government and other sources as it may relate to Louisville and Jefferson County, Kentucky.

Affiant states as a result of his research and inquiry Jefferson County, Kentucky (including the City of Louisville) had a population growth during the years set forth below as follows:

1940	385'392
1950	484,615
1960	610,947
1961	626,760
1962	632,350
1963	643,200
1964	649,445
1965	662,200

Affidavit of Richard K. Harb

Affiant states that Jefferson County, Kentucky, contains approximately 240,000 acres, that in the year 1960 approximately 171,484 acres in Jefferson County, Kentucky, were available for subdivision into single family lots or were then being so developed and that in the year 1961 approximately 169,136 acres in Jefferson County, Kentucky, were available for development into single family building lots or were then being so developed.

Affiant states that, based on the examination of material available to him, the construction of single family dwellings in Louisville and Jefferson County, Kentucky, for the years indicated were as follows:

Year	Number
1958	4549
1959	4320
1960	3177
1961	3201
1962	4026
1963	4344
1964	4697
1965	4715

Affiant states that sales of real estate made through the multiple listing service of the Louisville Real Estate Board and reported by it for the years indicated were as follows:

Year	Sales
1958	2610
1959	2693
1960	2602
1961	2630
1962	2922
1963	3222
1964	3404
1965	3700

/s/ Richard K. Harb

Affidavit of Richard K. Harb

Subscribed and sworn to before me by Richard K. Harb this 24th day of June, 1966.

/s/ Albert F. Reutlinger
Notary Public, Jefferson Co., Ky.

AFFIDAVIT OF HARRY R. BLACK.

Affiant, after being duly sworn, states that his name is Harry R. Black, that he is the Vice-President — Operations of United States Steel Corporation, Homes Division.

Affiant states that heretobefore, on or about October 31, 1960, the plaintiff, Fortner Enterprises, Inc., entered into a Dealer Franchise contract with the Homes Division of the United States Steel Corporation, and files herewith as a part hereof a photostatic copy of said contract.

Affiant states that United States Steel Corporation Homes Division markets its products in the United States, generally in an area bounded on he North by Canada, on the East by the East Coast, on the South by the Gulf Coast (including Florida) and on the West by Nebraska.

/s/ Harry R. Black

AFFIDAVIT OF W. L. ROLLINS.

Affiant, after being duly sworn, states that his name is W. L. Rollins, that he is the Assistant-Treasurer of U. S. Steel Homes Credit Corporation, which is a wholly owned subsidiary of United States Steel Corporation.

Affiant states that heretofore, on or about October 28, 1960, plaintiff, Fortner Enterprises, Inc. executed a certain mortgage deed, of record in Mortgage Book 395, page 314, in the office of the Clerk of the Jefferson County Court, Kentucky, which mortgage encumbered certain property in Jefferson County, Kentucky, in the aggregate of approximately 54.955 acres.

A photostatic copy of said mortgage deed is filed herewith as a part hereof.

Affidavit of W. L. Rollins

Heretofore, on or about August 2, 1961, plaintiff, Fortner Enterprises, Inc. executed another mortgage deed, of record in Mortgage Book 444, page 86, in the office of the Clerk of the Jefferson County Court, Kentucky, which mortgage deed encumbered certain property in Jefferson County, Kentucky, in the aggregate of approximately 7.299 acres.

A photostatic copy of said mortgage deed, dated August 2, 1961, is attached hereto as a part hereof.

Affiant states that he is informed and therefore believes that prior to the execution of the mortgage dated October 28, 1960 above referred to, plaintiff, Fortner Enterprises, Inc., insofar as being engaged in the real estate business, was dormant, that it was not then actively engaged in the building or real estate business nor indeed was it authorized to so engage until on or about October 26, 1960, when the Articles of Incorporation of Fortner Enterprises, Inc. were amended to permit its engaging in the building and real estate business.

Affiant is further informed and therefore believes that the plaintiff, Fortner Enterprises, Inc. prior to the execution of the mortgage dated August 2, 1961 requested of U. S. Steel Homes Credit Corporation that it makes this loan to it and that Fortner Enterprises, Inc. was the original movant in the transaction of August 2, 1961.

Affiant further states with reference to certain of the properties encumbered by the mortgages aforesaid, that on the dates below mentioned certain individual lots encumbered by the said mortgages were released from their encumbrance upon a pro-rata payment therefor as provided in the loan agreements filed as exhibits with the complaint and amended complaint:

Lot Number	Section Number	Date Released
195	1-D	March 19, 1962
205	1-D	August 28, 1962
271	Parcel 1	September 14, 1962

/s/ W. L. Rollins

PLAINTIFF'S TENDERED INSTRUCTIONS.

1. The evidence presented in this case has established as a matter of law that the defendants, U. S. Steel Corporation and U. S. Steel Homes Credit Corporation, conspired to establish an unlawful tying agreement between the defendant Credit Corporation and the plaintiff Fortner Enterprises, Inc. which required the plaintiff to purchase and build homes manufactured and sold by U. S. Steel Corporation in plaintiff's subdivision in violation of Sections 1 and 2 of the Sherman Act.

2. If you believe from the evidence that the unlawful tying agreement imposed upon the plaintiff by the defendants caused the plaintiff to lose profits on the sale of homes actually sold by the plaintiff in the subdivision and caused the plaintiff to lose profits by its inability to sell the remainder of the homes in the subdivision, then the law is for the plaintiff and you will award it such a sum and damages as will fairly and reasonably compensate it for the loss of profits as aforesaid, not to exceed on this account the sum of $197,100.00, the amount claimed.

3. If you further believe from the evidence that the unlawful conduct of the defendants caused the property of the plaintiff to be sold for a sum less than the fair and reasonable market value at the time of said sale, then you will also award the plaintiff as damages the difference in the sum for which said property was sold and its fair and reasonable market value at the time of said sale, not to exceed on this account the sum of $52,737.31, the amount claimed.

4. If you find for the plaintiff, your whole award shall not exceed the sum of $249,837.31, the amount claimed.

Tendered by:

Kenneth L. Anderson
A. Scott Hamilton, Jr.

OBJECTIONS TO EXHIBITS TENDERED BY PLAINTIFF PURSUANT TO PRE-TRIAL ORDER.

Defendants and each of them, by counsel, make objections to the following exhibits which may be tendered by the plaintiff. All exhibits to which objections are made are found in Attachment D to letter of Plaintiff's Counsel dated June 22, 1966 and will be further identified by the arabic numeral in connection with such Attachment D.

Item 1. There was no supporting information concerning the physical exhibits under this item, such as who furnished same, the date of furnishing, the nature of the defect to be claimed, the dwelling house package related thereto, etc. For these reason defendants cannot admit the authenticity of these exhibits.

Item 5. No information was furnished as to the authenticity of the photographs, what they portrayed, the date taken or any other data which would serve to qualify these photographs as exhibits to be used at the trial. For these reasons defendants cannot admit the authenticity of these exhibits.

Item 11. The accounting exhibit should not be admitted in evidence as an exhibit without opportunity to cross-examine Mr. Cooper who prepared it. Its authenticity has not been established.

Item 12. The authenticity of this exhibit, prepared by plaintiff, is not admitted.

Item 15. The notations made by plaintiff (or its agent) from this exhibit are not admitted as authentic without opportunity to cross-examine the person who made them.

Item 16. Objected to as authentic, pending opportunity to cross-examine the person who prepared same.

Item 19. Through no fault of plaintiff's counsel, this exhibit was furnished too late to examine before the making of this objection. This exhibit will be examined and defendants' position with regard thereto made known prior to trial. For the record an objection is made to this exhibit at this time.

Objections to Exhibits Tendered by Plaintiff, Etc.

Item 20. This exhibit, prepared by plaintiff, contains information as to alleged defects without opportunity to cross-examine the persons from whom the information was obtained. The exhibit cannot be admitted as authentic. The supplement to this exhibit regarding "Miscellaneous Invoices . . ." is objected to for indefiniteness and duplication in addition to the general objection made above.

Item 21. Enlargement of other exhibits is improper, will unduly emphasize the matter contained therein and will prejudice the jury. These exhibits are objected to.

Albert F. Reutlinger

[LETTERHEAD OF WOODWARD, HOBSON & FULTON]

Louisville, Kentucky 40202

June 22, 1966

Mr. Albert Reutlinger
501 South Second Street
Louisville, Kentucky 40202

In re: No. 4392 — United States District Court
Portner Enterprises, Inc. versus:
United States Steel Corporation, et al.

Dear Mr. Reutlinger:

Enclosed is a list of the names and addresses of the witnesses which the plaintiff may call to testify, either in person or by deposition, designated Attachment A.

Enclosed is a list of the documents obtained from the U. S. Steel Corporation which plaintiff may use at the trial of this case designated Attachment B. These documents are identified by the exhibit number placed on the back thereof by me at the time of their examination and copying and further identified by me on the listing of documents prepared at the time they were copied, a copy of which was delivered to you.

Enclosed is a listing of the documents obtained from U. S. Steel Credit Corporation which the plaintiff may

use at the trial of this case, designated Attachment C. These documents are identified in a like manner as those appearing on Attachment B.

I also enclose a listing of the additional exhibits which plaintiff may use at the trial of this case. Some of these documents or exhibits were also received from you on behalf of U. S. Steel Corporation and they will be appropriately identified at our conference in my office of this date. This listing is designated as Attachment D.

Enclosed also is a listing of the subject matters which the plaintiff will seek at our conference to stipulate. This has been designated as Attachment E.

Very truly yours,

Woodward, Hobson & Fulton
Kenneth L. Anderson

ATTACHMENT A

WITNESSES WHICH PLAINTIFF MAY USE AT THE TRIAL

1. A. B. Fortner, Jr.

2. A. W. Edmondson, 4600 Southern Parkway

3. Robert E. Robinson, 4806 Clarmar Road, Jeffersontown, Ky.

4. John Cooper, c/o Wm. S. Wetterer & Co., 3011 Preston Highway

5. Howard Bolin, 4902 Forrest Park Drive

6. Herman Miles, c/o Cook Lumber Co., 1514 W. Main Street

7. Earl E. Smith, 2300 Allston Avenue

8. Wilbur Powell, 515 Dorsey Way, Anchorage, Ky.

9. J. Ed Mudd, c/o Zettwouch-Fortner Corp., 4125 S. Third Street

10. A. B. McCulloch, c/o McCulloch & Bickel, 115 S. 4th Street

Objections to Exhibits Tendered by Plaintiff, Etc.

11. Stratton O. Hammon, 3750 Wilmington Ave.

12. Roscoe Dalton, 3804 Lexington Road

13. Paul Seminon, Starks Building

14. Hal Thomas, 10706 Dixie Highway, Valley Station, Kentucky

15. Ed. Anschutz, c/o Zettwoch-Fortner Corp., 4125 S. Third Street

16. Al Fleig, c/o Zettwoch-Fortner Corp., 4125 S. Third Street

17. Edward Horn, Louisville Mortgage Service, 101 W. Broadway

18. Harry Black, United States Steel Corporation

19. Stanley Mack, United States Steel Corporation

20. Neil G. Day, United States Steel Corporation

21. Meredith R. Marcillon, United States Steel Corporation

22. Edward L. Akers, United States Steel Corporation

23. Andrew Cowart, United States Steel Corporation

24. William R. Rollins, U. S. Steel Homes Credit Corporation

25. Allan Nash, Kentucky Home Life Building

26. John Prood, Kentucky Home Life Building

27. Jack E. Mudd, 601 Republic Building

28. Richard C. Dyas, U. S. Steel Homes Credit Corporation

29. William H. Lang, U. S. Steel Homes Credit Corporation

30. David H. Boyd, U. S. Steel Homes Credit Corporation

31. Benjamin L. Rawlins, U. S. Steel Homes Credit Corporation

32. Michael Atlas, 2646 Drayton Avenue

ATTACHMENT B

DOCUMENTS FROM UNITED STATES STEEL FILES WHICH PLAINTIFF MAY USE AT THE TRIAL

Document No.

54
138 & 57
50 & 71
51 & 72
66
137
55
58
67
43 & 45
46
42
136
17
18
16
41
70
68
40
207
202
4 & 7
201
200
242
132
131
126
240
226

Objections to Exhibits Tendered by Plaintiff, Etc.

Documents obtained as a part of Stanley Mack deposition.

Copies of minutes of Finance Committee and Board of Directors of U. S. Steel Corporation obtained during Rawlins' deposition.

237
178
167
243 - 252
1
10
206 & 11
12
20
21
29
30
37
208 & 209
211
123
141
159
62
63
64
65
73
75
79 & 80
78
83
93
77

ATTACHMENT C

DOCUMENTS FROM CREDIT CORPORATION FILES WHICH PLAINTIFF MAY USE AT THE TRIAL

C-23
C-21
C-25
C-26
C-24
C-6
C-7
C-13
C-12
C-8
C-5
C-10
C-14
C-9 and C-15
C-16
C-17
C-4
C-3
C-2
C-1
C-18
C-19
C-20

Minutes and Articles of Incorporation, etc., obtained in Mr. Rawlins' deposition and information contained in Mr. Reutlinger's letter to Kenneth L. Anderson dated May 4, 1964.

ATTACHMENT D

ADDITIONAL EXHIBITS WHICH PLAINTIFF MAY USE AT THE TRIAL

1. Sections of wall panels, sink tops and steel stud. (Will be exhibited to Mr. Reutlinger)

Objections to Exhibits Tendered by Plaintiff, Etc.

2. Home sales contracts. (Copies to be furnished Mr. Reutlinger)

3. Home package orders from Fortner Enterprises to Homes Division. (Mr. Reutlinger will be furnished copies of those which he has not already arranged to copy)

4. Closing statements. (Mr. Reutlinger will be furnished with copies of those which he has not arranged to copy)

5. Photographs. (These will be exhibited to Mr. Reutlinger)

6. Mortgages, notes and loan agreements for the 1960 and 1961 transactions. (Mr. Reutlinger has copies)

7. Competitive price quotations or list. (Mr. Reutlinger has, or will be furnished copies)

8. Products Manual. (Mr. Reutlinger has a copy)

9. Miscellaneous bulletins contained in Fortner Enterprises, Inc., Products Manual. (copies will be furnished)

10. Miscellaneous bulletins contained in Products Manual furnished to us by U. S. Steel. (Mr. Reutlinger has the bulletins)

11. Accounting exhibits. (Copies will be furnished)

12. Statistical charts. (Copies will be furnished)

13. U. S. Steel Corporation 1961 annual report. (To be exhibited)

14. U. S. Steel cost estimate on B-1 model obtained from U. S. Steel. (To be returned to Mr. Reutlinger)

15. U. S. Steel cost estimate on B-1 model from Fortner Enterprises file. (Copy to be furnished)

16. Golden Meadows Price List. (Copy to be furnished)

17. 2 brochures on 1961 U. S. Steel homes. (To be exhibited and copied if necessary)

18. Letter from U. S. Steel Homes Credit Corporation demanding payment, attached to plaintiff's original complaint. (Mr. Reutlinger has copy with his pleadings)

19. Form of Chart entitled "Sequence of Events Following Sales of Homes in Golden Meadows Subdivision".

(A copy of the form will be furnished at this time and source material will be given; the chart itself will be furnished later due to certain source documents being copied and out of the plaintiff's possession)

20. Form of Chart entitled "Complaints Re Components of U. S. Steel Homes". (A copy of the form of this chart will be furnished along with the source material; the chart itself will be furnished at a later date)

21. Blow-ups of portions of certain documents and the net profit computation. (To be exhibited)

22. Plans of homes furnished by the Homes Division. (To be exhibited)

ATTACHMENT E

TOPICS FOR DISCUSSION CONCERNING STIPULATION

1. U. S. Steel Corporation Annual Report.
2. Execution of loan agreements, mortgages and notes.
3. Chart entitled "Sequence of Events Following Sales of Homes in Golden Meadows Subdivision."
4. Charts concerning statistical data.

AFFIDAVIT OF A. B. FORTNER, JR.

Comes the affiant, A. B. Fortner, Jr., and states that he is and has been for a period of time prior to 1959 the President of the Plaintiff, Fortner Enterprises, Inc. Affiant states that during that same period of time he also has been President of Zettwoch-Fortner, Inc., a real estate company doing its principal business in Louisville and Jefferson County, Kentucky. Affiant states that he has been engaged personally, or as an officer of a company or companies, in the real estate business for many years in Louisville and Jefferson County, Kentucky.

Affiant states that he had available in 1959, through another corporation in which he owned an interest, certain

land in Jefferson County, Kentucky suitable for subdivision purposes. Affiant states that he was contacted by representatives of U. S. Steel Corporation's Homes Division during 1959 concerning the building of prefabricated homes manufactured by that company on said land. At that time affiant was told that very attractive financing was available from U. S. Steel Homes Credit Corporation. Affiant, as President of Fortner Enterprises, Inc., was then approached by representatives of the Credit Corporation offering substantial financial assistance for the purchase and development of the land in question and the construction of dwellings thereon provided that prefabricated homes manufactured by the Homes Division would be built on said land.

Affiant states that the ultimate offer of the Credit Corporation was to provide 100% financing for the purchase and development of the land in question. Affiant states that to his knowledge no such financial assistance was available to Fortner Enterprises, Inc. in 1959-1962 on the terms offered by the Credit Corporation from any other source. The offered financial assistance, particularly in terms of the 100% financing feature, was so unusual, unique as far as the Plaintiff was concerned, and attractive that the Plaintiff because of economic circumstances accepted the assistance offered, including conditions imposed by the Credit Corporation that prefabricated homes manufactured by the Homes Division would be built in the subdivision.

Affiant states that presentations made by the Homes Division as to the speed of erection and quality of the prefabricated home package made said product attractive to the Plaintiff, but that the Plaintiff would not have purchased said home packages but for the financial assistance offered by the Credit Corporation.

Due to the nature of the financial assistance offered, affiant signed the loan agreement dated November 28, 1960, which is an exhibit with the Complaint, and the Plaintiff subsequently entered into the development of the

land and the building of U. S. Steel homes on the lots in said division.

Prior to the time that affiant and Fortner Enterprises, Inc. became aware of the extent of the defective nature of the prefabricated homes and other problems caused by shortages in the home packages and delays in delivery of said packages, the Plaintiff applied for further financial assistance to obtain 32 additional lots which became available in said subdivision and to obtain additional working capital.

Subsequently, affiant became aware of the extent of the defects in construction or design of certain elements of the prefabricated home packages and other problems created by the Homes Division, and of the tremendous number of complaints from home purchasers and of the bad reputation of said subdivision insofar as the quality of the homes was concerned. Being aware of the fact that he was contractually obligated in the loan agreement with the Credit Corporation to build the prefabricated homes of the Homes Division on the lots in the subdivision, affiant approached Mr. Dyas and others from the Credit Corporation in the latter part of 1961 or the early part of 1962 seeking to build conventional or other homes in said subdivision. This request was refused and affiant was told that Plaintiff would be required to abide by the terms of the contract.

Problems with the prefabricated home packages continued. More and more defective sink tops were discovered. Closet door problems multiplied. Many other problems with components developed. Delays in delivery of the home packages continued and shortages in the packages when delivered continued. Complaints from home purchasers increased. The reputation concerning the quality of the homes being built became worse.

Affiant, as President of the Plaintiff company, ultimately had a meeting with representatives of the Credit

Corporation and the Homes Division in the offices of affiant's counsel, A. Scott Hamilton, on or about June 5, 1962, at which time the Plaintiff formally requested the Credit Corporation to allow it to build conventional or other homes in the subdivision. This request was forcefully refused by Mr. Dyas, the representative of the Credit Corporation. Affiant's Affidavit concerning that conference is already a part of the record in this case and a copy is attached hereto.

/s/ A. B. Fortner, Jr.

AFFIDAVIT OF A. B. FORTNER, JR.

Affiant, A. B. Fortner, Jr., after being duly sworn, deposes and states he is President of Fortner Enterprises, Inc., the plaintiff in the pending action of Fortner Enterprises, Inc. vs United States Steel Corporation et al; that prior to the filing of said action, this affiant through his attorneys, Hamilton, Hopson & Hamilton, arranged a conference with certain officials of U.S. Steel Homes Division of United States Steel Corporation and the U.S. Steel Homes Credit Corporation in the offices of Hamilton, Hopson & Hamilton, 1015 Kentucky Home Life Building, Louisville, Kentucky; that said conference was held on the 31st day of May, 1962, and that there were present at said conference Mr. Dyas and Mr. Rollins, representing the U.S. Steel Homes Credit Corporation, Mr. Black, Mr. Mack and Mr. Boyd representing the United States Steel Homes Division of United States Steel Corporation, together with their attorney Albert F. Reutlinger. This affiant was present together with his attorneys, Henry D. Hopson and A. Scott Hamilton, Jr., representing Fortner Enterprises, Inc. Also present was Mr. Miles, the general contractor who had done considerable work in the Golden Meadows Subdivision, and Mr. Earl Smith, one of the principal salesmen handling sales of the houses in the subdivision. This con-

ference was arranged in an effort to work out an amicable solution to the problems that were caused by the defective condition of the homes being furnished by the United States Steel Homes Division of the United States Steel Corporation. The persons who had purchased these homes were registering innumerable complaints about defective parts and the defective conditions of the homes that appeared subsequent to their taking occupancy. The dissatisfaction with these homes caused the reputation of this subdivision to deteriorate to the point that further sale of the homes furnished by the United States Steel Homes Division of the United States Steel Corporation became practically impossible. With this condition prevailing, it became apparent that Fortner Enterprises, Inc. could not continue to construct the homes furnished by the United States Steel Homes Division of the United States Steel Corporation as it was required to do under the loan agreement. These facts were fully explained to Mr. Dyas and the other gentlemen present, and our problem was fully explored with them. They were advised by Fortner Enterprises, Inc. that the project could yet be made a success and their loan completely repaid if they would delete from the loan agreement the requirement that it was necessary to erect on each lot a prefabricated dwelling house manufactured by the United States Steel Homes Division of the United States Steel Corporation and allow Fortner Enterprises, Inc. to construct conventional homes on said lots. Mr. Dyas replied in substance as follows:

> I don't care about the component parts being furnished you by U.S. Steel Homes Division United States Steel Corporation, good, bad or indifferent. That is out of my department. Fortner Enterprises made an agreement with my company. It has an obligation to meet under this loan agreement, and I intend to see that Fortner Enterprises fulfills every obligation set forth in that agreement. United States Steel Homes Credit

Corporation is not in the business of financing houses for other companies or businesses. Your little show does not impress me one bit.

With this rejoinder Mr. Dyas got up and left the office.

/s/ A. B. Fortner, Jr.

Present at this meeting were Henry D. Hopson and A. Scott Hamilton, Jr. and each of them states that the foregoing is a true and correct recital of the proceedings that took place at the said meeting.

/s/ Henry D. Hopson
/s/ A. Scott Hamilton, Jr.

AFFIDAVIT OF EDWIN D. HORN.

Comes the affiant, Edwin D. Horn, and states that he is President of Louisville Mortgage Service Company and has been President of that Company for 13 years. Affiant states that Louisville Mortgage Service Company is and has been for many years in the business of providing and handling loans for the purchase and development of real estate and the construction thereon of residences and other improvements. Affiant states that he has been involved in the mortgage loan business and the real estate business for 32 years.

Affiant states that as a result of his position with Louisville Mortgage Service Company in 1959-1962 and his contacts with the mortgage loan business in Jefferson County, Kentucky and the State of Kentucky during said period, affiant was and is familiar with the types of financing available in said area during said time.

Affiant states that the type of financing package involved in the transaction between U. S. Steel Homes Credit Corporation and Fortner Enterprises, Inc., was unusual and unique during the period 1959 through 1962 in Jefferson County, Kentucky. The affiant further states that such a financing plan was not available to Fortner Enterprises

or any other potential borrower from or through Louisville Mortgage Service Company or from or through any other leading institution or mortgage company to this affiant's knowledge during this period.

Affiant states that as a result of this type of financial assistance given by U. S. Steel Homes Credit Corporation to Fortner Enterprises, Inc., and others and somewhat similar assistance given by a few prefabricated home manufacturers or their affiliated companies in 1963 and subsequent years, Louisville Mortgage Service Company and other such organizations have been forced to offer to their customers similar 100% financing for purchase and development of land. Affiant states that no such contracts, agreements, or mortgages in which his mortgage company has been involved required the borrower to purchase materials from any specified supplier, thus allowing the borrowers to obtain said materials on the open market at competitive prices.

/s/ Edwin D. Horn

AFFIDAVIT OF ALBERT F. REUTLINGER.

Affiant, after being duly sworn, states that his name is Albert F. Reutlinger, that he is the defendants' attorney herein and that the facts contained in this affidavit are true.

Through the medium of photostatic copies of the plaintiff's federal income tax returns furnished this affiant by the attorneys for the plaintiff, this affiant is informed and therefore believes that on June 30, 1960 plaintiff had a deficit of $16,174.56.

The photostatic copy of the aforesaid tax returns furnished as aforesaid is attached hereto as a part hereof.

/s/ Albert F. Reutlinger

ORDER.

On July 6, 1966 this action came on for hearing on defendants' motion for summary judgment; there appeared Kenneth L. Anderson and A. Scott Hamilton, Jr. for the plaintiff, and Albert F. Reutlinger, O. Grant Bruton and Louis E. Ackerson for the defendants.

Counsel for defendants tendered the affidavit of Albert F. Reutlinger and an amended answer for filing.

Counsel having been heard and the Court being advised,

IT IS ORDERED:

(1) The affidavit of Albert F. Reutlinger is filed herein, there being no objection on the part of plaintiff.

(2) The amended answer tendered shall not be filed, on the objection of counsel for plaintiff.

(3) Defendants' motion for summary judgment is sustained.

(4) Counsel for defendants shall tender findings of fact with conclusions of law in support thereof, in accordance with the Court's oral findings.

July 7, 1966

/s/ James F. Gordon
United States District Judge

ORDER.

The Court, on its own motion, does hereby set aside its order herein of July 7, 1966.

July 11, 1966

/s/ James F. Gordon
United States District Judge

MOTION.

Comes the plaintiff, Fortner Enterprises, Inc., by counsel, and moves the Court to enter an order filing the Affidavit and attachments thereto of Kenneth L. Anderson and the Affidavit of Herman Miles on the ground that oral leave of Court was given on July 6, 1966 to plaintiff to file and make a part of the court record the documents relied upon by the plaintiff as trial exhibits which are the subject matter of the Affidavit of Kenneth L. Anderson and on the ground that the Affidavit of Herman Miles contains information relied upon at the argument on July 6, 1966, and considered by the Court.

/s/ Kenneth L. Anderson

FINDINGS OF FACT AND CONCLUSIONS OF LAW— JUDGMENT DISMISSING COMPLAINT AND AMENDED COMPLAINT.

Preliminary Statement

This is a civil anti-trust action brought under the Clayton Act, §§ 4 and 16, 38 Stat. 731, 737, 15 U.S.C. §§ 14 and 26, for alleged violation by the defendants of Sections 1 and 2 of the Sherman Act, 26 Stat. 209, 15 U.S.C. §§ 1 and 2. Although the complaint states that the action is instituted under 15 U.S.C. § 14, which is Section 3 of the Clayton Act, plaintiff now asserts that this was a typographical error. For the purpose of deciding the motion before the Court, this representation of the plaintiff has no bearing however in view of the court's opinion as set forth below.

The case is before the Court upon a motion for summary judgment for defendants, pursuant to Rule 56 of the Federal Rules of Civil Procedure and involves the legality of a provision in two loan agreements between the plaintiff, Fortner Enterprises, Inc. and U. S. Steel Homes Credit Corporation (sometimes hereinafter Credit Corpo-

ration), requiring plaintiff to erect a prefabricated dwelling house manufactured by United States Steel Homes Division (sometimes hereinafter Homes Divisions) of United States Steel Corporation (sometimes hereinafter Steel Corporation) on each of 219 lots in Jefferson County, Kentucky, with respect to which Credit Corporation agreed to loan mony to plaintiff to assist in the acquisition and development of the property and the construction of dwellings. The first loan agreement, dated October 28, 1960, involved 187 lots, and was the subject of the plaintiff's original complaint, filed July 19, 1962. The second loan agreement, dated August 2, 1961, involved 32 lots, and was included within plaintiff's amended complaint, filed January 21, 1966.

Findings of Fact

Plaintiff, in the early part of 1960 was a dormant corporation with a substantial (over $16,000) deficit. It was owned entirely by A. B. Fortner, Jr., of Louisville, Kentucky, with the possible exception of one share of common stock held by Mr. Fortner's wife. Until October 27, 1960, it was not authorized to engage in the building or real estate business. The defendant United States Steel Corporation had its manufacturing plant in New Albany, Indiana across the Ohio River from Louisville, Kentucky. There its Homes Division manufactured component parts for prefabricated dwelling houses. These component parts of prefabricated dwelling houses, sometimes called "home packages", are sold by the defendant Steel Corporation generally throughout the United States east of the Mississippi River and in a tier of states just west of that river. The defendant Credit Corporation is a wholly owned subsidiary of the other defendant Steel Corporation. Its sole business function is to furnish financial assistance to customers or dealers of the parent corporation's Homes Division, in instances in which they apply for such assistance and seem to be unable to obtain the same sort of assistance on reasonable terms from normal sources. The

underlying purpose of the Credit Corporation's function is to enable its parent, in the sale of home packages, to compete with other building material manufacturers, sellers, lumber yards, brick factories and other prefabricated house manufacturers, who provide similar assistance to their customers.

With this background of the general situation, the court now turns to the precise point in issue which is whether the defendants, parent and subsidiary, allegedly "conspired to establish an unlawful tying agreement between the defendant Credit Corporation and the plaintiff Fortner Enterprises, Inc., which required the plaintiff to purchase and build homes manufactured and sold by U. S. Steel Corporation in plaintiff's subdivision in violation of Sections 1 and 2 of the Sherman Act". See Paragraph 1, Plaintiff's tendered instructions furnished the court pursuant to pretrial order. In the light of this succinct statement of the plaintiff's basic claim, the court now examined in more detail the facts surrounding the execution of the first questioned contract, dated October 28, 1960. Shortly prior to that date plaintiff was a dormant corporation, controlled by A. B. Fortner, Jr. and had a substantial financial deficit. The defendant Homes Division was in the business of selling home packages. Plaintiff had available to it property in Jefferson County, Kentucky, suitable for subdivision purposes. This property was readily available to plaintiff because of Mr. Fortner's interest in another corporation then holding title to same. The plaintiff however had no funds to purchase or develop land or purchase home packages or otherwise build homes or indeed engage in any business. There were ample funds available in Louisville, Kentucky during 1960 for borrowers. From local sources alone the figure exceeds $163,330,000. In addition to this figure $133,316,000 in real estate mortgages were recorded in Jefferson County, Kentucky in 1960. Credit Corporation had no monopoly or "corner" on money at that time, nor does plaintiff contend to the contrary. Mr. Fortner was not

then disposed to provide plaintiff with funds from any other source, including a personal investment, but instead applied for money from the Credit Corporation with which to buy property from the other corporation in which he had an interest. Thereafter plaintiff, using funds also borrowed from the Credit Corporation completed or at least partially completed the development of that property. And finally, again using funds borrowed from the Credit Corporation, constructed homes on part of the property thus acquired and developed utilizing in the construction thereof home packages purchased from the Steel Corporation. Plaintiff concludes in affidavits furnished by it that all of this was to the sole advantage of the defendants. The court finds however that in this particular transaction, (as in most transactions), both parties to the transaction felt it would be to their mutual advantage. Certainly the plaintiff was not coerced nor compelled to enter into the contract about which it now complains. Prior to the execution of the first contract it was not transacting any business of substance and entered into the arrangement with the expectation that it would be profitable to it.

The particular transaction is evidenced by three types of written documents. There are notes which are evidence of the debts incurred or to be incurred as funds were advanced. There is a mortgage in recordable form and a loan agreement which is the tie-in contract about which plaintiff now complains. All of these three types of documents are part of the same transaction. Indeed the loan agreement on its face recites that these documents constitute the "agreement" between the parties. The loan agreement in substance requires that while there is money due the Credit Corporation from the plaintiff, the property encumbered by the mortgage shall be developed with single family dwellings utilizing as a component part thereof home packages purchased from the United States Steel Corporation, Homes Division. The property encumbered by the mortgage and hence subject to the provisions of the loan agreement

consisted of approximately 55 acres in Jefferson County, Kentucky. At the time this contract was made, Jefferson County, Kentucky contained approximately 240,000 acres, of which approximately 171,484 acres were suitable for subdivision into single family lots or were then being so developed. In essence the arrangement between the plaintiff and the Credit Corporation is one of borrower—lender, with the lender imposing certain restrictions on the plaintiff's property purchased with the borrowed funds, but only while the debt remains unpaid. For our purposes here, the principal restriction while the debt is outstanding is the requirement that plaintiff utilize home packages purchased from the Credit Corporation's parent, when it constructs dwellings on the 55 acres purchased and developed with funds obtained from the Credit Corporation. The loan agreement is not an exclusive dealing contract within the normal use of that term. Plaintiff is not prohibited from purchasing prefabricated homes from the Steel Corporation's competitors or building conventional homes or engaging in any other business, competitive to the defendants or not, except on the 55 acres here involved. The day following the execution of this loan agreement, plaintiff under a similar arrangement with defendants' competitors, could well have purchased additional property, developed it and built homes on it, in competition with the defendants. At any time, plaintiff could have liquidated the debt to defendant Credit Corporation and be relieved from all obligation to it, including the restriction or encumbrance affecting the 55 acres.

On October 31, 1960 plaintiff entered into a franchise contract with the Homes Division. But none of this transaction between the plaintiff and the defendant Credit Corporation affected in any way that franchise with the Homes Division. The Homes Division would sell home packages to anyone who could pay for same. It was not a requirement to become a franchise dealer or to buy home packages that any would be purchaser, including plaintiff,

borrow money from the Credit Corporation. Nor was it a requirement if the would be purchaser, including plaintiff, needed to borrow money that it borrow money from the Credit Corporation. Nor would the plaintiff or any other franchise dealer lose his franchise because having once borrowed from the Credit Corporation, it liquidated that debt. In short, the transaction before the court is simply one in which certain restrictions as to use were placed on 55 acres of land in Jefferson County, Kentucky, while there was an outstanding debt in connection with the purchase and development of that property. There is no general restriction on the plaintiff nor any change in the situation as a result of the debt's liquidation, except that all restrictions are removed.

The same general facts relate to the second of the two questioned contracts, which was executed October 2, 1961, except that there, only an additional 7.3 acres were involved and the plaintiff had been engaged in the development of the subdivision acquired with the proceeds of the first loan for about seven months.

No additional facts were suggested or offered at or prior to the hearing on defendants' motion for a summary judgment which would alter the basic facts outlined above. There can be no dispute as to the facts derived from the various contracts and documents since they speak for themselves. The size of the property restricted was not questioned. Therefore the court is compelled to the conclusion that the case is one for decision on summary judgment. That the defendants did or did not conspire to achieve the tie-in contracts is of no consequence at this time. It is the contracts themselves which give rise to and furnish the basis for plaintiff's claim. If these contracts do not meet the tests determining violations of the anti-trust acts, then they can furnish no claim for damages for a violation of the anti-trust laws, regardless of any other damage, real or imagined, flowing therefrom. Those claims simply may have become claims for breach of contract or related claims but are not within the purview of the anti-trust laws.

Conclusions of Law

The abandonment of a claim under the Clayton Act only serves to increase plaintiff's burden since that later statute is broader in its concept and conduct which would violate Section 3 of the Clayton Act need not violate Sections 1 and 2 of the Sherman Act. This proposition is found conversely stated in the closing paragraph of Tampa Electric Co. v. Nashville Co., 365 U.S. 320. This abandonment or "erroneous" complaint regarding Section 3 of the Clayton Act is of small consequence however since the court is of the opinion that the allegedly illegal tie-in contracts do not fall "within the broader proscription of §3 of the Clayton Act" and hence do not violate the provisions of the Sherman Act on which plaintiff now professes to rely. Tampa Electric Co. v. Nashville Co., supra; Times Picayune Publishing Co. v. United States 345 U.S. 594.

On its face, the complaint is at variance with the Exhibit Loan Agreement (the questioned contract) filed as an exhibit thereto. The complaint will be controlled and modified by the terms of the written exhibit on which plaintiff bases its cause of action. Consolidated Jewelers Inc. v. Standard Financial Corporation, 325 F. 2nd 31; Ingram v. State and Building Corporation, Ky., 309 S.W. 2nd 169. It is desirable in a summary judgment proceeding to have the issues set forth in the complaint made clear. The complaint thus modified by its exhibit, alleges that a condition for borrowing money from the Credit Corporation is that plaintiff will use home packages purchased from the Steel Corporation in the construction of homes on the 55 acres in Jefferson County, Kentucky bought and developed with Credit Corporation's funds while the debt is outstanding. Reference is made to the Findings of Fact hereinabove set forth.

The amended complaint likewise must be modified by the Exhibit Loan Agreement, which by reference is incorporated as a part of it.

It is these loan agreements which plaintiff claims are illegal tie-in contracts, violative of Sections 1 and 2 of the

Sherman Act. The fact of conspiracy or lack of it, surrounding or related to the execution of these contracts has no bearing on the matter at this point. If the contracts are illegal, under the facts attendant thereto, then plaintiff has a cause of action and may then proceed to prove conspiracy. And if successful in this endeavor to prove the damage flowing therefrom.

The court will only discuss in detail the earlier contract, executed in 1960. It will not be necessary to discuss the later (1961) contract, since it is similar to the earlier contract and for the reasons herein stated, the court's views on the earlier contract apply with equal vigor to the second and later contract, brought into this case by an amended complaint.

Tie-in contracts have been the subject of both public and private litigation. By public, the court means litigation instituted by the United States Government in enforcement of the anti-trust laws and by private the court means actions such as we have here. The United States Government has taken no part here, even earlier by civil or criminal action as sometimes happens. Even though the anti-trust laws expressly provide for private redress if those laws be violated, it still must be borne in mind that the ultimate aim is public good, "for it is the theory of the anti-trust laws that the long run advantage of the community depends on the removal of restraints upon competition." Standard Oil of California v. United States, 337 U.S. 293. This is not to say that there are different standards between public and private litigation (unless expressly provided which is not the case here) in the general enforcement of the anti-trust laws, but clearly it is not the purpose of the anti-trust laws to furnish treble damages where there have been only ordinary breaches of contract, conspiracies to injury reputation or property, etc.

There are two distinct elements or parts of a tie-in contract, both of which must violate the anti-trust laws before such a form of contract can be the basis for a claim under

those laws. A contract may be offensive as to one element or the other, yet not furnish the basis for an anti-trust action. Both requirements must be met. These contracts "are unreasonable in and of themselves wherever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a not insubstantial amount of interstate is affected". Northern Pacific Railroad Co., v. United States, 356 U.S. 1. Phrased another way, to make a tie-in contract illegal, the offender must possess "monopoly power or, at the very least a high degree of economic control in the market for the tying service and" the tie-in result in a "substantial restraint upon competition in the market for the tied service". Centanni v. T. Smith & Son, Inc., 216 F. Supp. 330. See also International Salt Company v. United States, 332 U.S. 392 and Times-Picayune Publishing Co. v. United States, 345 U.S. 594. The court will discuss the elements of a tying contract in the order indicated. Here money from the Credit Corporation is the tying product and home packages sold by the Steel Company are the tied product.

Obviously and as indicated in the court's Findings of Fact, the defendant Homes Corporation does not enjoy a monopoly of, nor a patent on money. Plaintiff argues, because of its financial plight at the time it made the contract, Credit Corporation's agreement to 100% financing was so unique that this was tantamount to monopoly power or a high degree of control of the tying product. Credit Corporation's generosity to the plaintiff does not go to the availability of the tying product in the market place and obviously others, if they chose, could lend to plaintiff money on the same terms and conditions as defendant Credit Corporation. Simply stated, a plan or proposal for the generous use of the tying product (money) is not equivalent to economic power with respect to the tying product. The test set in the cited cases is not met simply by contending the proposal for the use of the tying product

is more generous than others may propose. The unique feature of Credit Corporation's plan and its attraction for the plaintiff is not general and it must be general in the market place to fulfill the requirements found in the cited cases. Indeed many people may not find Credit Corporation's arrangement with plaintiff attractive. They may not desire the restrictions or find them useful. If however Credit Corporation enjoyed monopoly or a high degree of economic control in the market for money, others would have no choice but to adopt the plan. The test is universal compulsion not a peculiar attraction for one corporation as here. This singular attraction does not create market dominance or economic control over the product in and of itself and "of course where the seller has no control or dominance over the tying product so that it does not represent an effectual weapon to pressure buyers into taking the tied item any restraint of trade attributable to such tying arrangements would obviously be insignificant at most". Northern Pacific Railroad Co. v. United States, supra. This principle leads logically to consideration of the second element required to be found in an illegal tie-in contract.

To be bad under the anti-trust laws the contract must also create a substantial restraint on competition involving the sale of the tied product (home packages). If the relevant market concept as to the restriction found in the contract would relate to the area in which the defendant Steel Corporation competed, comparison between the 55 acres affected and the total area in which the Steel Corporation competes in the sale of its home packages becomes ludicrous. Tampa Electric Co. v. Nashville Co., supra. Being more realistic, since plaintiff conducts only a local operation, the court feels the geographical comparison for the effect on interstate commerce should be made between Jefferson County Kentucky and the encumbered 55 acres. But even here the discrepancy between the restricted property and the portion of the county available for develop-

ment is great. Only .00032% of the available area in the county is affected by the contract. To further lessen the strain, if any, on competitive restraint, the loan agreement does not prohibit plaintiff generally from purchasing competitive products from others and it permits complete competition when the indebtedness to the Credit Corporation is liquidated. All of this without effect on plaintiff's franchise contract with the Steel Corporation.

Hypothetical illustrations of possible situations under the present contract, as it affects competition, will demonstrate the weakness and minimal effect of it on competition. Suppose the Steel Corporation produced a markedly inferior product and was unable to sell it without some sort of a tie-in device (and here the court assumes Credit Corporation has a monopoly on money). The present arrangement captures for the defendants certain territory (55 acres) in Jefferson County, Kentucky, leaving to the general public 99.99968% of that county in which to build homes purchased from Steel Corporation's competitors. This could include purchases through the medium of the plaintiff itself since it was not generally restricted. Thus, both the general public and the defendants' competitors have practical freedom of choice in Jefferson County, Kentucky. A second illustration will indicate the fallacy of claiming that it is the market for single dwellings or even in a more restricted sense, prefabricated single family dwellings, from entering into the concept. Assume the absurd but legally possible situation in which Jefferson County, Kentucky's market for single family or prefabricated single family dwellings was only one such dwelling unit annually. In the situation before the court, the potential buyer of that single family dwelling unit from plaintiff, or from others in competition with plaintiff, or directly from suppliers in competition with the defendant Steel Corporation, or anyone, has 99.99968% of the county in which to locate the home and fulfill his needs. In summary, the restriction here fails to "suffer the qualifying

disability" which is a "tendency to work a substantial—not remote—lessening of 'competition in the relevant competitive market". Tampa Electric Co. v. Nashville Co., supra.

For the foregoing reasons, the courts concludes as a matter of law that the contract fails to meet either of the requirements necessary for it to be illegal under the anti-trust laws.

Other Matters

The affidavit of Albert F. Reutlinger is ordered filed of record herein, there being no objection on the part of plaintiff.

Defendant's tender of an amended answer setting up a Fourth Defense, that of pari delicto, served by mail on plaintiff's attorney June 10, 1966 comes too late and this amended answer will not be permitted to be filed.

In view of the court's decision on defendants' motion for a summary judgment, it is not necessary that it consider or rule on other pending motions made by the defendants directed to the amended complaint, nor does it rule on any of the objections made by the defendants to certain exhibits which plaintiff indicated it would tender at the trial of the case.

During the course of the recent hearing, plaintiff suggested that the judgment entered January 15, 1964, in Action Number 4392-A, styled Fortner Enterprises, Inc. v. U. S. Steel Homes Credit Corporation was not final and would be appealed. The record discloses that this companion case arose out of a counterclaim by defendant U. S. Steel Homes Credit Corporation to obtain a judgment for the funds advanced and to foreclose the mortgage securing the debt then in default. After the issues were joined by reason of the counterclaim, this court entered an order separating the trial of the within anti-trust action from the mortgage foreclosure action. Thereafter, in the mortgage foreclosure action certain issues were raised and resolved by a judgment. This judgment finally and fully disposed

of all issues between the two parties to Action Number 4392-A in this court, styled Fortner Enterprises, Inc., Plaintiff v. U. S. Steel Credit Corporation, Defendant. Judge Shelbourne, now retired, entered the judgment in that foreclosure action. It is his opinion and belief, and in it the court concurs, that the judgment entered in that separate foreclosure action was a final judgment and subject to appeal from and after the date of its entry, since it disposed of all issues then pending between the parties to that separate action.

CONCLUSION

Defendants' motion to have the court order its amended answer tendered July 6, 1966 filed of record is overruled. No order is entered on other pending motions, except on defendants' motion for a summary judgment. This motion for a summary judgment is sustained, and the complaint and the amended complaint are dismissed, plaintiff to pay all costs.

Judge

MEMORANDUM OPINION—JUDGMENT DISMISSING COMPLAINT AND AMENDED COMPLAINT.

Preliminary Statement

This is a civil anti-trust action rought under the Clayton Act, §§ 4 and 16, 38 Stat. 731, 737, 15 U.S.C. §§ 14 and 26, for alleged violation by the defendants of Sections 1 and 2 of the Sherman Act, 26 Stat. 209, 15 U.S.C. §§ 1 and 2. Although the complaint states that the action is instituted under 15 U.S.C. § 14, which is Section 3 of the Clayton Act, plaintiff now asserts that this was a typographical error. For the purpose of deciding the motion before the Court, this representation of the plaintiff has no bearing however in view of the court's opinion as set forth below.

The case is before the Court upon a motion for summary judgment for defendants, pursuant to Rule 56 of the Federal Rules of Civil Procedure and involves the legality of a provision in two loan agreements between the plaintiff, Fortner Enterprises, Inc. and U. S. Steel Homes Credit Corporation (sometimes hereinafter Credit Corporation), requiring plaintiff to erect a prefabricated dwelling house manufactured by United States Steel Homes Division (sometimes hereinafter Homes Division) of United States Steel Corporation (sometimes hereinafter Steel Corporation) on each of 219 lots in Jefferson County, Kentucky, with respect to which Credit Corporation agreed to loan money to plaintiff to assist in the acquisition and development of the property and the construction of dwellings. The first loan agreement, dated October 28, 1960, involved 187 lots, and was the subject of the plaintiff's original complaint, filed July 19, 1962. The second loan agreement, dated August 2, 1961, involved 32 lots, and was included within plaintiff's amended complaint, filed January 21, 1966.

Statement of the Case

Plaintiff, in the early part of 1960 was a dormant corporation with a substantial (over $16,000) deficit. It was owned entirely by A. B. Fortner, Jr., of Louisville, Kentucky, with the possible exception of one share of common stock held by Mr. Fortner's wife. Until October 27, 1960, it was not authorized to engage in the building or real estate business. The defendant United States Steel Corporation had its manufacturing plant in New Albany, Indiana across the Ohio River from Louisville, Kentucky. There its Homes Division manufactured component parts for prefabricated dwelling houses. These component parts of prefabricated dwelling houses, sometimes called "home packages", are sold by the defendant Steel Corporation generally throughout the United States east of the Mississippi River and in a tier of states just west of that river. The defendant Credit Corporation is a wholly owned

subsidiary of the other defendant Steel Corporation. Its sole business function is to furnish financial assistance to customers or dealers of the parent corporation's Homes Division, in instances in which they apply for such assistance and seem to be unable to obtain the same sort of assistance on reasonable terms from normal sources. The underlying purpose of the Credit Corporation's function is to enable its parent, in the sale of home packages, to compete with other building material manufacturers, sellers, lumber yards, brick factories and other prefabricated house manufacturers, who provide similar assistance to their customers.

With this background of the general situation, the court now turns to the precise point in issue which is whether the defendants, parent and subsidiary, allegedly "conspired to establish an unlawful tying agreement between the defendant Credit Corporation and the plaintiff Fortner Enterprises, Inc., which required the plaintiff to purchase and build homes manufactured and sold by U. S. Steel Corporation in plaintiff's subdivision in violation of Sections 1 and 2 of the Sherman Act". See Paragraph 1, Plaintiff's tendered instructions furnished the court pursuant to pre-trial order. In the light of this succinct statement of the plaintiff's basic claim, the court now examines in more detail the uncontroverted facts surrounding the execution of the first questioned contract, dated October 28, 1960. Shortly prior to that date plaintiff was a dormant corporation, controlled by A. B. Fortner, Jr. and had a substantial financial deficit. The defendant Homes Division was in the business of selling home packages. Plaintiff had available to it property in Jefferson County, Kentucky, suitable for subdivision purposes. This property was readily available to plaintiff because of Mr. Fortner's interest in another corporation then holding title to same. The plaintiff however had no funds to purchase or develop land or purchase home packages or otherwise build homes or indeed engage in any business. There were ample funds

available in Louisville, Kentucky during 1960 for borrowers. From local sources alone the figure exceeds $163,330,000. In addition to this figure $133,316,000 in real estate mortgages were recorded in Jefferson County, Kentucky in 1960. Credit Corporation had no monopoly or "corner" on money at that time, nor does plaintiff contend to the contrary. Mr. Fortner was not then disposed to provide plaintiff with funds from any other source, including a personal investment, but instead applied for money from the Credit Corporation with which to buy property from the other corporation in which he had an interest. Thereafter plaintiff, using funds also borrowed from the Credit Corporation completed or at least partially completed the development of that property. And finally, again using funds borrowed from the Credit Corporation, constructed homes on part of the property thus acquired and developed utilizing in the construction thereof home packages purchased from the Steel Corporation. Plaintiff concludes in affidavits furnished by it that all of this was to the sole advantage of the defendants. The court finds however that in this particular transaction, (as in most transactions), both parties to the transaction felt it would be to their mutual advantage. Certainly the plaintiff was not coerced nor compelled to enter into the contract about which it now complains. Prior to the execution of the first contract it was not transacting any business of substance and entered into the arrangement with the expectation that it would be profitable to it.

The particular transaction is evidenced by three types of written documents. There are notes which are evidence of the debts incurred or to be incurred as funds were advanced. There is a mortgage in recordable form and a loan agreement which is the tie-in contract about which plaintiff now complains. All of these three types of documents are part of the same transaction. Indeed the loan agreement on its face recites that these documents constitute the "agreement" between the parties. The loan agreement in

substance requires that while there is money due the Credit Corporation from the plaintiff, the property encumbered by the mortgage shall be developed with single family dwellings utilizing as a component part thereof home packages purchased from the United States Steel Corporation, Homes Division. The property encumbered by the mortgage and hence subject to the provisions of the loan agreemnt consisted of approximately 55 acres in Jefferson County, Kentucky. At the time this contract was made, Jefferson County, Kentucky contained approximately 240,000 acres, of which approximately 171,484 acres were suitable for subdivision into single family lots or were then being so developed. In essence the arrangement between the plaintiff and the Credit Corporation is one of borrower - lender, with the lender imposing certain restrictions on the plaintiff's property purchased with the borrowed funds, but only while the debt remains unpaid. For our purposes here, the principal restriction while the debt is outstanding is the requirement that plaintiff utilize home packages purchased from the Credit Corporation's parent, when it constructs dwellings on the 55 acres purchased and developed with funds obtained from the Credit Corporation. The loan agreement is not an exclusive dealing contract within the normal use of that term. Plaintiff is not prohibited from purchasing prefabricated homes from the Steel Corporation's competitors or building conventional homes or engaging in any other business, competitive to the defendants or not, except on the 55 acres here involved. The day following the execution of this loan agreement, plaintiff under a similar arrangement with defendants' competitors, could well have purchased additional property, developed it and built homes on it, in competition with the defendants. At any time, plaintiff could have liquidated the debt to defendant Credit Corporation and be relieved from all obligation to it, including the restriction or encumbrance affecting the 55 acres.

On October 31, 1960 plaintiff entered into a franchise contract with the Homes Division. But none of this transac-

tion between the plaintiff and the defendant Credit Corporation affected in any way that franchise with the Homes Division. The Homes Division would sell home packages to anyone who could pay for same. It was not a requirement to become a franchise dealer or to buy home packages that any would be purchaser, including plaintiff, borrow money from the Credit Corporation. Nor was it a requirement if the would be purchaser, including plaintiff, needed to borrow money that it borrow money from the Credit Corporation. Nor would the plaintiff or any other franchise dealer lose his franchise because having once borrowed from the Credit Corporation, it liquidated that debt. In short, the transaction before the court is simply one in which certain restrictions as to use were placed on 55 acres of land in Jefferson County, Kentucky, while there was an outstanding debt in connection with the purchase and development of that property. There is no general restriction on the plaintiff nor any change in the situation as a result of the debt's liquidation, except that all restrictions are removed.

The same general facts relate to the second of the two questioned contracts, which was executed October 2, 1961, except that there, only an additional 7.3 acres were involved and the plaintiff had been engaged in the development of the subdivision acquired with the proceeds of the first loan for about seven months.

No additional facts were suggested or offered at or prior to the hearing on defendants' motion for a summary judgment which would alter the basic facts outlined above. There can be no dispute as to the facts derived from the various contracts and documents since they speak for themselves. The size of the property restricted was not questioned. Therefore the court is compelled to the conclusion that the case is one for decision on summary judgment. That the defendants did or did not conspire to achieve the tie-in contracts is of no consequence at this time. It is the contracts themselves which give rise to and furnish the

basis for plaintiff's claim. If these contracts do not meet the tests determining violations of the anti-trust acts, then they can furnish no claim for damages for a violation of the anti-trust laws, regardless of any other damage, real or imagined, flowing therefrom. Those claims simply may have become claims for breach of contract or related claims but are not within the purview of the anti-trust laws.

Conclusions of Law

The abandonment of a claim under the Clayton Act only serves to increase plaintiff's burden since that later statute is broader in its concept, and conduct which would violate Section 3 of the Clayton Act need not violate Sections 1 and 2 of the Sherman Act. This proposition is found conversely stated in the closing paragraph of Tampa Electric Co. v. Nashville Co., 365 U. S. 320. This abandonment or "erroneous" complaint regarding Section 3 of the Clayton Act is of small consequence however since the court is of the opinion that the allegedly illegal tie-in contracts do not fall "within the broader prescription of §3 of the Clayton Act" and hence do not violate the provisions of the Sherman Act on which plaintiff now professes to rely. Tampa Electric Co. v. Nashville Co., supra; Times Picayune Publishing Co. v. United States 345 U. S. 594.

On its face, the complaint is at variance with the Exhibit Loan Agreement (the questioned contract) filed as an exhibit thereto. The complaint will be controlled and modified by the terms of the written exhibit on which plaintiff bases its causes of action. Consolidated Jewelers, Inc. v. Standard Financial Corporation, 325 F. 2nd 31; Ingram v. State and Building Corporation, Ky., 309 S.W. 2nd 169. It is desirable in a summary judgment proceeding to have the issues set forth in the complaint made clear. The complaint thus modified by its exhibit, alleges that a condition for borrowing money from the Credit Corporation is that plaintiff will use home packages purchased from the Steel Corporation in the construction of homes

on the 55 acres in Jefferson County, Kentucky bought and developed with Credit Corporation's funds while the debt is outstanding. Reference is made to the Findings of Fact hereinabove set forth.

The amended complaint likewise must be modified by the Exhibit Loan Agreement, which by reference is incorporated as a part of it.

It is these loan agreements which plaintiff claims are illegal tie-in contracts, violative of Sections 1 and 2 of the Sherman Act. The fact of conspiracy or lack of it, surrounding or related to the execution of these contracts has no bearing on the matter at this point. If the contracts are illegal, under the facts attendant thereto, then plaintiff has a cause of action and may then proceed to prove conspiracy. And if successful in this endeavor to prove the damage flowing therefrom.

The court will only discuss in detail the earlier contract, executed in 1960. It will not be necessary to discuss the later (1961) contract, since it is similar to the earlier contract and for the reasons herein stated, the court's views on the earlier contract apply with equal vigor to the second and later contract, brought into this case by an amended complaint.

Tie-in contracts have been the subject of both public and private litigation. By public, the court means litigation instituted by the United States Government in enforcement of the anti-trust laws and by private the court means actions such as we have here. The United States Government has taken no part here, even earlier by civil or criminal action as sometimes happens. Even though the anti-trust laws expressly provide for private redress if those laws be violated, it still must be borne in mind that the ultimate aim is public good, "for it is the theory of the anti-trust laws that the long run advantage of the community depends on the removal of restraints upon competition." Standard Oil of Cailfornia v. United States, 337 U. S. 293. This is not to say that there are different standards

between public and private litigation (unless expressly provided which is not the case here) in the general enforcement of the anti-trust laws, but clearly it is not the purpose of the anti-trust laws to furnish treble damages where there have been only ordinary breaches of contract, conspiracies to injury reputation or property, etc.

There are two distinct elements or parts of a tie-in contract, both of which must violate the anti-trust laws before such a form of contract can be the basis for a claim under those laws. A contract ma, be offensive as to one element or the other, yet not furnish the basis for an anti-trust action. Both requirements must be met. These contracts "are unreasonable in and of themselves wherever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a not insubstantial amount of interstate is affected". Northern Pacific Railroad Co., v. United States, 356 U. S. 1. Phrased another way, to make a tie-in contract illegal, the offender must possess "monopoly power or, at the very least a high degree of economic control in the market for the tying service and" the tie-in result in a "substantial restraint upon competition in the market for the tied service". Centanni v. Smith & Son, Inc., 216 F. Supp. 330. See also International Salt Company v. United States, 332 U. S. 392 and Times-Picayune Publishing Co. v. United States, 345 U. S. 594. The court will discuss the elements of a tying contract in the order indicated. Here money from the Credit Corporation is the tying product and home packages sold by the Steel Company are the tied product.

Obviously and as indicated in the court's Statement of the Case, the defendant Homes Corporation does not enjoy a monopoly of, nor a patent on money. Plaintiff argues, because of its financial plight at the time it made the contract, Credit Corporation's agreement to 100% financing was so unique that this was tantamount to monopoly power or a high degree of control of the tying product. Credit

Corporation's generosity to the plaintiff does not go to the availability of the tying product in the market place and obviously others, if they chose, could lend to plaintiff money on the same terms and conditions as defendant Credit Corporation. Simply stated, a plan or proposal for the generous use of the tying produce (money) is not equivalent to economic power with respect to the tying product. The test set in the cited cases is not met simply by contending the proposal for the use of the tying product is more generous than others may propose. The unique feature of Credit Corporation's plan and its attraction for the plaintiff is not general and it must be general in the market place to fulfill the requirements found in the cited cases. Indeed many people may not find Credit Corporation's arrangement with plaintiff attractive. They may not desire the restrictions or find them useful. If however Credit Corporation enjoyed monopoly or a high degree of economic control in the market for money, others would have no choice but to adopt the plan. The test is universal compulsion not a peculiar attraction for one corporation as here. This singular attraction does not create market dominance or economic control over the product in and of itself and "of course where the seller has no control or dominance over the tying product so that it does not represent an effectual weapon to pressure buyers into taking the tied item any restraint of trade attributable to such tying arrangements would obviously be insignificant at most". Northern Pacific Railroad Co. v. United States, supta. This principle leads logically to consideration of the second element required to be found in an illegal tie-in contract.

To be bad under the anti-trust laws the contract must also create a substantial restraint on competition involving the sale of the tied product (home packages). If the relevant market concept as to the restriction found in the contract would relate to the area in which the defendant Steel Corporation competed, comparison between the 55

acres affected and the total area in which the Steel Corporation competes in the sale of its home packages becomes ludicrous. Tampa Electric Co. v. Nashville Co., supra. Being more realistic, since plaintiff conducts only a local operation, the court feels the geographical comparison for the effect on interstate commerce should be made between Jefferson County Kentucky and the encumbered 55 acres. But even here the discrepancy between the restricted property and the portion of the county available for development is great. Only .00032% of the available area in the county is affected by the contract. To further lessen the strain, if any, on competitive restraint, the loan agreement does not prohibit plaintiff generally from purchasing competitive products from others and it permits complete competition when the indebtedness to the Credit Corporation is liquidated. All of this without effect on plaintiff's franchise contract with the Steel Corporation.

Hypothetical illustrations of possible situations under the present contract, as it affects competition, will demonstrate the weakness and minimal effect of it on competition. Suppose the Steel Corporation produced a markedly inferior product and was unable to sell it without some sort of a tie-in device and (here the court assumes Credit Corporation has a monopoly on money). The present arrangement captures for the defendants certain territory (55 acres) in Jefferson County, Kentucky, leaving to the general public 99.99968% of that county in which to build homes purchased from Steel Corporation's competitors. This could include purchases through the medium of the plaintiff itself since it was not generally restricted. Thus, both the general public and the defendants' competitors have practical freedom of choice in Jefferson County, Kentucky. A second illustration will indicate the fallacy of claiming that it is the market for single dwellings or even in a more restricted sense, prefabricated single family dwellings, from entering into the concept. Assume the absurd but legally possible situation in which Jefferson

County, Kentucky's market for single family or prefabricated single family dwellings was only one such dwelling unit annually. In the situation before the court, the potential buyer of that single family dwelling unit from plaintiff, or from others in competition with plaintiff, or directly from suppliers in competition with the defendant Steel Corporation, or anyone, has 99.99968% of the county in which to locate the home and fulfill his needs. In summary, the restriction here fails to "suffer the qualifying disability" which is a "tendency to work a substantial — not remote — lessening of competition in the relevant competitive market". Tampa Electric Co. v. Nashville Co., supra.

For the foregoing reasons, the courts concludes as a matter of law that the contract fails to meet either of the requirements necessary for it to be illegal under the antitrust laws.

Other Matters

The affidavit of Albert F. Reutlinger is ordered filed of record herein, there being no objection on the part of plaintiff.

Defendant's tender of an amended answer setting up a Fourth Defense, that of pari delicto, served by mail on plaintiff's attorney June 10, 1966 comes too late and this amended answer will not be permitted to be filed.

In view of the court's decision on defendants' motion for a summary judgment, it is not necessary that it consider or rule on other pending motions made by the defendants directed to the amended complaint, nor does it rule on any of the objections made by the defendants to certain exhibits which plaintiff indicated it would tender at the trial of the case.

Plaintiff's counsel, several days after the hearing on defendants' motion for a summary judgment, tendered his affidavit and that of Herman Miles, to be considered in connection with that motion. This is too late. These affidavits should have been filed prior to the day of the hearing to be considered. See Rule 56. They may not now

be filed. The content of these affidavits however, had they been considered, is such as would not affect the court's decision on the summary judgment.

During the course of the recent hearing, plaintiff suggested that the judgment entered January 15, 1964, in Action Number 4392-A, styled Fortner Enterprises, Inc. v. U. S. Steel Homes Credit Corporation was not final and would be appealed. The record discloses that this companion case arose out of a counterclaim by defendent U. S. Steel Homes Credit Corporation to obtain a judgment for the funds advanced and to foreclose the mortgage securing the debt then in default. After the issues were joined by reason of the counterclaim, this court entered an order separating the trial of the within anti-trust action from the mortgage foreclosure action. Thereafter, in the mortgage foreclosure action certain issues were raised and resolved by a judgment. This judgment finally and fully disposed of all issues between the two parties to Action Number 4392-A in this court, styled Fortner Enterprises, Inc., Plaintiff v. U. S. Steel Credit Corporation, Defendant. Judge Shelbourne, now Senior Judge of this court, entered the judgment in that foreclosure action. It is his opinion and belief, and in it the court concurs, that the judgment entered in that separate foreclosure action was a final judgment and subject to appeal from and after the date of its entry, since it disposed of all issues then pending between the parties to that separate action.

CONCLUSION

Plaintiff's motion to have the affidavits of Kenneth L. Anderson and Herman Miles filed is overruled. They may be tendered.

Defendants' motion to have the court order its amended answer tendered July 6, 1966 filed of record is overruled. No order is entered on other pending motions, except on defendants' motion for a summary judgment. This motion

for a summary judgment is sustained, and the complaint and the amended complaint are dismissed, plaintiff to pay all costs.

James F. Gordon
JUDGE

A Copy: Attest
Martin R. Glenn, Clerk
By F. Allen
Deputy Clerk

September 7, 1966
Emphasis supplied.

JUDGMENT.

IT IS ORDERED AND ADJUDGED that defendants' motion for summary judgment is hereby sustained; the complaint and the amended complaint are dismissed with prejudice, that the plaintiff take nothing, and that the defendants, United States Steel Corporation, and U. S. Steel Homes Credit Corporation recover of the plaintiff, Fortner Enterprises, Inc. their costs of action.
September 8, 1966

James F. Gordon
United States District Judge

NOTICE—MOTIONS—ORDER.

TO:

Mr. Albert F. Reutlinger
Middleton Seelbach Wolford Willis & Cochran
501 South Second Street
Louisville, Kentucky
Attorneys for Defendants

Notice is hereby given that the plaintiff, Fortner Enterprises, Inc., in the courtroom of the above Court, on September 30, 1966, at 2:00 P.M., will make the following motions and tender the following order:

MOTIONS

1. Comes the plaintiff, Fortner Enterprises, Inc., and moves the Court, pursuant to Rule 60 (a), Federal Rules of Civil Procedure, that the Court modify its opinion and set aside its order of September 7, 1966, refusing to file the affidavit of Kenneth L. Anderson and attached exhibits as a part of the record, and that the Court order said affidavit and attached exhibits of Kenneth L. Anderson filed of record in this action.

In addition, plaintiff moves the Court that the Court's opinion of September 7, 1966, be modified to show that the documents attached to the affidavit of Kenneth L. Anderson were considered by the Court on oral argument of this action on July 6, 1966, and that attorneys for the plaintiff at that time were given leave by the Court, as authorized by Rule 56 (e), Federal Rules of Civil Procedure, to file said documents of record.

In support of this motion, plaintiff files affidavits of Kenneth L. Anderson and A. Scott Hamilton, Jr.

2. Comes the plaintiff, Fortner Enterprises, Inc., and moves the Court, pursuant to Rule 60 (a), Federal Rules of Civil Procedure, that the Court modify its opinion and order of September 7, 1966, refusing to file the affidavit of Herman Miles and to order said affidavit filed of record.

In support of this motion, plaintiff files affidavits of Kenneth L. Anderson and A. Scott Hamilton, Jr.

3. Comes the plaintiff, Fortner Enterprises, Inc., pursuant to Rule 59 (a) and (e), Federal Rules of Civil Procedure, and moves the Court to set aside the Memorandum Opinion and Judgment Dismissing Complaint and Amended Complaint entered September 7, 1966, and the judgment entered herein on September 8, 1966, and to reconsider the Court's ruling upon the defendants' motion for summary judgment and set aside the sustaining of same.

In support of this motion, plaintiff files the affidavit and attached exhibits of Kenneth L. Anderson, said affidavit having been sworn to on September 15, 1966.

The grounds for the plaintiff's motions are:

(1) On the basis of the affidavits and attached exhibits, depositions, interrogatories and answers thereto, and the pleadings filed in this action, there is a genuine issue as to material facts, and the defendants, as the moving parties, were not entitled to judgment as a matter of law.

(2) That the Court made errors of law and fact on the face of the record in its memorandum opinion of September 7, 1966.

John P. Sandidge
Kenneth L. Anderson
Woodward, Hobson & Fulton
1805 Kentucky Home Life Building
Louisville, Kentucky
Attorneys for Plaintiff

ORDER

Motions having been made by the plaintiff, the Court having received written memorandum and having heard oral arguments, IT IS ORDERED:

1. That the motion of the plaintiff to modify the opinion and order of September 7, 1966, is sustained.

IT IS ORDERED that the third literary paragraph of page 16 of the opinion be stricken and same modified to read as follows:

"At the hearing of this action on July 6, 1966, plaintiff's counsel asked permission to file of record documents, the authenticity of which had been admitted by the defendants, during preliminary procedures in preparation for trial. Said documents were presented to the Court by means of blown-up exhibits, or exhibits read to the Court during the oral arguments or described to the Court during the argument. At the beginning of the

oral argument, counsel for the plaintiff asked for permission to rely on said documents and was given its permission to do so during the argument. At the conclusion of the argument, counsel for the plaintiff asked permission to file the documents of record. Said permission to file the documents of record after the conclusion of the argument was given to counsel for the plaintiff pursuant to Rule 56 (e) Federal Rules of Civil Procedure. Therefore, said documents and the affidavit of Kenneth L. Anderson, sworn to July 15, 1966, explaining the source of said documents, are filed of record."

IT IS FURTHER ORDERED that the plaintiff's motion to modify and amend the order of September 7, 1966, is sustained and that portion of said order stating: "Plaintiff's motion to have the affidavits of Kenneth L. Anderson and Herman Miles filed is overruled. They may be tendered." is stricken and IT IS ORDERED that the affidavit of Kenneth L. Anderson, sworn to July 15, 1966, and attached exhibits are filed of record.

2. Motion of plaintiff to modify the opinion and order of September 7, 1966, as to the affidavit of Herman Miles is sustained.

IT IS ORDERED that the third literary paragraph of the opinion be stricken and that same read as follows:

"During the course of the oral argument, reference was made to the testimony of Herman Miles concerning the excessive price of the packages sold to the plaintiff by the defendant, U. S. Steel Corporation, Homes Division. No objection was made to reference to this testimony. Plaintiff has filed the affidavit of Herman Miles in support of their oral argument made on July 6, 1966. Since said matter was considered in the oral argument, permission is granted to file the affidavit of Herman Miles."

IT IS FURTHER ORDERED that the following language is stricken from the order of September 7, 1966:

"Plaintiff's motion to have the affidavits of Kenneth L. Anderson and Herman Miles filed is overruled. They may be tendered."

In lieu thereof, IT IS ORDERED that the affidavit of Herman Miles be, and it is filed of record.

3. That the opinion of September 7, 1966, and the judgment of September 8, 1966, are hereby set aside and to be held for naught.

IT IS HEREBY ORDERED that the motion of the defendants for summary judgment is hereby overruled because there are genuine issues of material facts and the defendants are not entitled to judgment as a matter of law.

United States District Judge

CERTIFICATE

I hereby certify that on September , 1966, a copy of this Notice-Motions-Order, the affidavit of Kenneth L. Anderson and attached exhibits, dated September 15, 1966, the affidavit of Kenneth L. Anderson dated September 16, 1966, the affidavit of A. Scott Hamilton, Jr., and a memorandum of authorities in support of said motions was delivered to Mr. Albert F. Reutlinger, 501 South Second Street, Louisville, Kentucky.

AFFIDAVIT OF KENNETH L. ANDERSON.

Comes the affiant, Kenneth L. Anderson, co-counsel for the plaintiff in the within captioned action, and states:

The above captioned anti-trust suit was originally set for trial on July 6, 1966 and subsequently a pre-trial conference was set for July 6, 1966, with the trial to begin July 7, 1966. On June 24, 1966, affiant was served with motion for summary judgment on behalf of the defendants which was scheduled for hearing on July 6, 1966.

Affidavit of Kenneth L. Anderson

The Court had previously entered a pre-trial order on October 18, 1965, requiring all parties to exchange the names of witnesses and to exhibit the documents and other exhibits upon which they would rely at the trial. In accordance with that pre-trial order, plaintiff, through affiant, on June 22, 1966, had delivered to counsel for the defendants, with carbon copy to Honorable James F. Gordon, a letter, with attachments, identifying the witnesses to be called and the exhibits which plaintiff would use at the trial. True and correct copies of the pre-trial order of October 18, 1965, and of affiant's letter, with attachments, of June 22, 1966, are attached.

On that same date, June 22, 1966, plaintiff's counsel exhibited to counsel for the defendants, at affiant's offices, those documents and other exhibits which counsel for the defendants had not previously seen and upon which plaintiff relied. Most of the exhibits designated by the plaintiff were documents obtained from the defendants through order of the Court upon rulings on objections to interrogatories served on the defendants on behalf of the plaintiff, or through depositions of defendants' officers and employees. Thus, the documents relied upon by the plaintiff were designated as exhibits prior to the time the motion for summary judgment was served on the plaintiff.

The documents relied upon by the plaintiff were not in the District Court file since the orders of the District Court had required the defendants to produce for plaintiff's inspection and copying the documents in question as if under Rule 34 of the Federal Rules of Civil Procedure. Other documents had been exhibited to counsel for the defendants but had not actually been placed in the District Court file since they were to be introduced as exhibits at the trial of the case. Certain information obtained from the defedants appearing in letters from counsel for the defendants giving answers to certain interrogatories or other information furnished pursuant to agreements in depositions had also not been formally placed in the District Court record.

Affidavit of Kenneth L. Anderson

After receiving the motion for summary judgment, affiant prepared and filed a memorandum of authorities and the affidavit of A. B. Fortner, President of the plaintiff, and Edwin Horn, President of Louisville Mortgage Service, Inc.

In the memorandum of authorities of the plaintiff, at page 7, the defendants' documents are referred to as being relied upon by the plaintiff.

At the time of the pre-trial conference which began on the afternoon of July 6, 1966, the motion for summary judgment was first taken up by the Court. Either at the beginning of argument made by counsel for the defendants or at the beginning of affiant's argument on behalf of the plaintiff, affiant pointed out to the Court that there were numerous documents relied upon by the plaintiff at the motion for summary judgment which had been designated as exhibits on behalf of the plaintiff and whose authenticity had not been objected to by the defendants and the authenticity thereof was therefore admitted under the Court's pre-trial order. Affiant pointed out that those documents were not physically a part of the District Court's record due to the nature of their production but that affiant regarded said documents as a part of the record for purposes of the motion for summary judgment. Counsel for the defendants made no objection to this procedure and the Court concurred that the documents could be relied upon by plaintiff. The purpose of this preliminary statement was to definitely establish that the documents could be relied upon since, otherwise, relief would have to be sought under the Federal Rules to formally file the documents in the record.

Affiant, during his argument on behalf of the plaintiff, then referred specifically to some of the documents exhibiting or reading from same, and by general statement, or summary, to the balance of the documents upon which plaintiff relied. Blown-up documents or portions thereof were also used, some of which were not a part of the Court's record. At the close of affiant's argument at the

time the Court orally indicated that the motion for summary judgment would be sustained, affiant specifically pointed out to the Court that the documents upon which the plaintiff relied were not physically a part of the District Court's record and requested leave to file said documents of record. Oral leave to file said documents of record was granted by the Court at that time.

On the following day, July 7, 1966, the Court entered an order stating that the defendants' motion for summary judgment was sustained. As soon as affiant could reach the Court by telephone after receipt of said order, which was on July 11, 1966, affiant did so and pointed out to the Court at that time that the Court had given plaintiff oral leave to file the documents relied upon by the plaintiff and that it would take a few days to get the documents copied and physically in the record. The Court recalled that oral leave, and on his own motion, entered an order on July 11, 1966, setting aside his order of July 7, 1966. Copies of both orders are attached hereto.

Four days later, on July 15, 1966, affiant personally took his motion and affidavit dated July 15, 1966 with the documents attached to exhibits, along with the affidavit of Herman Miles, and asked the Court how they should be handled. The Court directed affiant to deliver said motion and affidavits to the Clerk's office. This was done on that date.

Affiant's affidavit was prepared to specifically explain the origin of each of the sets of documents which accompanied said affidavit and both the affidavit and the tendered order recited that same was being filed with leave of Court.

Affiant repeated the fact that oral leave had been granted to file the documents upon which the plaintiff relied in the record in his letter to the Court of July 26, 1966, a copy of which is attached hereto.

Affiant states that the only reference to plaintiff's tendering affidavits made by the Court on July 6, 1966, was in response to a statement made by affiant to the effect

that a supplementary affidavit of A. B. Fortner, Jr., could be made on a certain point which arose during argument. The Court responded that such an affidavit could be tendered but that its contents would not be considered significant by the Court.

During the course of affiant's argument on behalf of the plaintiff on July 6, 1966, the Court at one point asked affiant if the defendant, U. S. Steel Corporation, had sold house packages to the plaintiff at reduced prices. Affiant responded that certain of the documents relied upon by plaintiff (which were attached to affiant's affidavit of July 15, 1966) plus the testimony of Herman Miles showed that the house packages were being sold to plaintiff at excessive prices, as is alleged in plaintiff's complaint. Affiant did not and does not specifically recall specifically requesting on July 6, 1966 leave to file the affidavit of Herman Miles and for that reason has and does maintain that the ground for filing the affidavit of Herman Miles is the consideration of said information during the oral hearing on July 6, 1966.

Kenneth L. Anderson

ORDER.

On October 15, 1965 this action came on for hearing on defendants' motions (1) for cost bond, and (2) to separate the issue of liability from the issue of damages.

Counsel having been heard and the Court being advised,

IT IS ORDERED

(1) Defendants' motion for bond for the defendants' cost herein expended in the event the defendants recover their costs from plaintiff is sustained and such bond is fixed in the amount of $500.00.

(2) Defendants' motion to separate the issue of liability from the issue of damages is hereby overruled; however, plaintiff is directed that the Court will require, in the interest of justice, that plaintiff offer its proof in this action in the order of,

(a) proof of conspiracy,
(b) proof of the fact of damage, and
(c) proof of the actual damage suffered.

Any requested deviation from the above order of proof will be allowed during trial only on motion before being offered.

IT IS FURTHER ORDERED that this case is set for trial to a jury on February 14, 1966, at 9:30 A.M., and that the following terms shall apply,

(1) Fifteen days before trial the parties shall (a) exchange a list of special damages if any such damages are claimed, (b) exchange a list of witnesses who may testify, and (c) produce for inspection by opposing party all exhibits that are to be placed in evidence. Unless written objection to the authenticity of an exhibit is made to the Court five days before trial the authenticity of the exhibit is admitted. In the absence of good cause no witness will be permitted to testify and no exhibit can be placed in evidence except upon the terms of this Order.

(2) Fifteen days before trial the parties shall meet for a final discussion of (a) possibility of a settlement, and (b) preparation of a written stipulation of all possible facts.

(3) Seven days before trial, plaintiff's counsel will submit to the Court proposed instructions with right of defendant's counsel to submit to the Court proposed instructions, if any, four days before trial.

(4) Seven days before trial, plaintiff's counsel shall submit memorandum brief on any unusual problems anticipated to arise in the trial of the action and defendants' counsel may, within four days, reply thereto should he desire.

October 18, 1965

James F. Gordon, Judge
United States District Court

NCR

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CARD 7

Affidavit of Kenneth L. Anderson

June 22, 1966

Mr. Albert Reutlinger
501 South Second Street
Louisville, Kentucky 40202

In re: No. 4392 — United States District Court
Fortner Enterprises, Inc. versus:
United States Steel Corporation, et al

Dear Mr. Reutlinger:

Enclosed is a list of the names and addresses of the witnesses which the plaintiff may call to testify, either in person or by deposition, designated Attachment A.

Enclosed is a list of the documents obtained from the U. S. Steel Corporation which plaintiff may use at the trial of this case designated Attachment B. These documents are identified by the exhibit number placed on the back thereof by me at the time of their examination and copying and further identified by me on the listing of documents prepared at the time they were copied, a copy of which was delivered to you.

Enclosed is a listing of the documents obtained from U. S. Steel Credit Corporation which the plaintiff may use at the trial of this case, designated Attachment C. These documents are identified in a like manner as those appearing on Attachment B.

I also enclose a listing of the additional exhibits which plaintiff may use at the trial of this case. Some of these documents or exhibits were also received from you on behalf of U. S. Steel Corporation and they will be appropriately identified at our conference in my office of this date. This listing is designated as Attachment D.

Enclosed also is a listing of the subject matters which the plaintiff will seek at our conference to stipulate. This has been designated as Attachment E.

Very truly yours,

WOODWARD, HOBSON & FULTON
Kenneth L. Anderson

Affidavit of Kenneth L. Anderson

ATTACHMENT A
WITNESSES WHICH PLAINTIFF MAY USE AT THE TRIAL

1. A. B. Fortner, Jr.
2. A. W. Edmondson, 4600 Southern Parkway
3. Robert E. Robinson, 4806 Clarmar Road, Jeffersontown, Ky.
4. John Cooper, c/o Wm. S. Wetterer & Co., 3011 Preston Highway
5. Howard Bolin, 4902 Forrest Park Drive
6. Herman Miles, c/o Cook Lumber Co., 1514 W. Main Street
7. Earl E. Smith, 2300 Allston Avenue
8. Wilbur Powell, 515 Dorsey Way, Anchorage, Ky.
9. J. Ed Mudd, c/o Zettwoch-Fortner Corp., 4125 S. Third Street
10. A. B. McCulloch, c/o McCulloch & Bickel, 115 S. 4th Street
11. Stratton O. Hammon, 3750 Wilmington Ave.
12. Roscoe Dalton, 3804 Lexington Road
13. Paul Seminon, Starks Building
14. Hal Thomas, 10706 Dixie Highway, Valley Station, Kentucky
15. Ed. Anschutz, c/o Zettwoch-Fortner Corp. 4125 S. Third Street
16. Al Fleig, c/o Zettwoch-Fortner Corp., 4125 S. Third Street
17. Edward Horn, Louisville Mortgage Service, 101 W. Broadway
18. Harry Black, United States Steel Corporation
19. Stanley Mack, United States Steel Corporation
20. Neil G. Day, United States Steel Corporation
21. Meredith R. Marcillon, United States Steel Corporation

22. Edward L. Akers, United States Steel Corporation

23. Andrew Cowart, United States Steel Corporation

24. William R. Rollins, U. S. Steel Homes Credit Corporation

25. Allan Nash, Kentucky Home Life Building

26. John Prood, Kentucky Home Life Building

27. Jack E. Mudd, 601 Republic Building

28. Richard C. Dyas, U. S. Steel Homes Credit Corporation

29. William H. Lang, U. S. Steel Homes Credit Corporation

30. David H. Boyd, U. S. Steel Homes Credit Corporation

31. Benjamin L. Rawlins, U. S. Steel Homes Credit Corporation

32. Michael Atlas, 2646 Drayton Avenue

ATTACHMENT B

DOCUMENTS FROM UNITED STATES STEEL FILES WHICH PLAINTIFF MAY USE AT THE TRIAL

Document No.

54
138 & 57
50 & 71
51 & 72
66
137
55
58
67
43 & 45
46
42
136
17

Document No.

18
16
41
70
68
40
207
202
4 & 7
201
200
242
132
131
126
240
226

Documents obtained as a part of Stanley Mack deposition.

Copies of minutes of Finance Committee and Board of Directors of U. S. Steel Corporation obtained during deposition.

Exhibit No.

237
178
167
243 - 252
1
10
206 & 11
12
20
21
29
30
37

Affidavit of Kenneth L. Anderson

Exhibit No.
208 & 209
211
123
141
159
62
63
64
65
73
75
79 & 80
78
83
93
77

ATTACHMENT C

DOCUMENTS FROM CREDIT CORPORATION FILES WHICH PLAINTIFF MAY USE AT THE TRIAL

C-23
C-21
C-25
C-26
C-24
C-6
C-7
C-13
C-12
C-8
C-5
C-10
C-14
C-9 and C-15
C-16
C-17

C-4
C-3
C-2
C-1
C-18
C-19
C-20

Minutes and Articles of Incorporation, etc., obtained in Mr. Rawlins' deposition and information contained in Mr. Reutlinger's letter to Kenneth L. Anderson dated May 4, 1964.

ATTACHMENT D

ADDITIONAL EXHIBITS WHICH PLAINTIFF MAY USE AT THE TRIAL

1. Sections of wall panels, sink tops and steel stud. (Will be exhibited to Mr. Reutlinger)

2. Home sales contracts. (Copies to be furnished Mr. Reutlinger)

3. Home package orders from Fortner Enterprises to Homes Division. (Mr. Reutlinger will be furnished copies of those which he has not already arranged to copy)

4. Closing statements. (Mr. Reutlinger will be furnished with copies of those which he has not arranged to copy)

5. Photographs. (These will be exhibited to Mr. Reutlinger)

6. Mortgages, notes and loan agreements for the 1960 and 1961 transactions. (Mr. Reutlinger has copies)

7. Price quotations or list. (Mr. Reutlinger has, or will be furnished copies)

8. Products Manual. (Mr. Reutlinger has a copy)

9. Miscellaneous bulletins contained in Fortner Enterprises, Inc., Products Manual. (copies will be furnished)

10. Miscellaneous bulletins contained in Products Manual furnished to us by U. S. Steel. (Mr. Reutlinger has the bulletins)

11. Accounting exhibits. (Copies will be furnished)

12. Statistical charts. (Copies will be furnished)

13. U. S. Steel Corporation 1961 annual report. (To be exhibited)

14. U. S. Steel cost estimate on B-1 model obtained from U. S. Steel. (To be returned to Mr. Reutlinger)

15. U. S. Steel cost estimate on B-1 model from Fortner Enterprises file. (Copy to be furnished)

16. Golden Meadows Price List. (Copy to be furnished)

17. 2 brochures on 1961 U. S. Steel homes. (To be exhibited and copied if necessary)

18. Letter from U. S. Steel Homes Credit Corporation demanding payment, attached to plaintiff's original complaint. (Mr. Reutlinger has copy with his pleadings)

19. Form of Chart entitled "Sequence of Events Following Sales of Homes in Golden Meadows Subdivision". (A copy of the form will be furnished at this time and source material will be given; the chart itself will be furnished later due to certain source documents being copied and out of the plaintiff's possession)

20. Form of Chart entitled "Complaints Re Components of U. S. Steel Homes". (A copy of the form of this chart will be furnished along with the source material; the chart itself will be furnished at a later date)

21. Blow-ups of portions of certain documents and the net profit computation. (To be exhibited)

22. Plans of homes furnished by the Homes Division. (To be exhibited)

ATTACHMENT E

TOPICS FOR DISCUSSION CONCERNING STIPULATION

1. U. S. Steel Corporation Annual Report.

2. Execution of loan agreements, mortgages and notes.

Affidavit of Kenneth L. Anderson

3. Chart entitled "Sequence of Events Following Sales of Homes in Golden Meadows Subdivision."

4. Charts concerning statistical data.

ORDER.

On July 6, 1966 this action came on for hearing on defendants' motion for summary judgment; there appeared Kenneth L. Anderson and A. Scott Hamilton, Jr. for the plaintiff, and Albert F. Reutlinger, O. Grant Bruton and Louis E. Ackerson for the defendants.

Counsel for defendants tendered the affidavit of Albert F. Reutlinger and an amended answer for filing.

Counsel having been heard and the Court being advised,

IT IS ORDERED:

(1) The affidavit of Albert F. Reutlinger is filed herein, there being no objection on the part of plaintiff.

(2) The amended answer tendered shall not be filed, on the objection of counsel for plaintiff.

(3) Defendants' motion for summary judgment is sustained.

(4) Counsel for defendants shall tender findings of fact with conclusions of law in support thereof, in accordance with the Court's oral findings.

July 7, 1966

/s/ James F. Gordon
United States District Judge

ORDER.

The Court, on its own motion, does hereby set aside its order herein of July 7, 1966.

James F. Gordon
United States District Judge

July 11, 1966

Affidavit of Kenneth L. Anderson

July 26, 1966

Judge James F. Gordon
Federal Building
Louisville, Kentucky

In re: CA No. 4392 — Fortner Enterprises, Inc. vs. United States Steel Corporation and U. S. Steel Homes Credit Corporation

Dear Judge Gordon:

At our pre-trial conference on July 6, 1966, you entertained argument on the defendants' Motions for Summary Judgment and at the close of the arguments you indicated orally that you were prone to grant the Summary Judgments. You indicated at that time that you would give plaintiff, whom I represent, opportunity to put into the record the documents upon which the plaintiff relies in this case and which had been previously identified as trial exhibits and authenticated in accordance with your pre-trial order. You also indicated that we would have opportunity to place in the record additional material relied upon at the argument but not formally in the record at the time of the argument. The documents and the affidavit of Herman Miles have subsequently been placed in the Court's record.

At the time of the oral argument you also made a statement about counsel for defendants drafting proposed Findings of Fact and Conclusions of Law. You may recall that during our telephone conversation of July 11, 1966, I stated to you that the plaintiff would object and did object to any Findings of Fact and Conclusions of Law in a Summary Judgment situation such as was before the Court.

We have now received the sixteen page proposed Findings of Fact and Conclusions of Law prepared by counsel for the defendants, along with his letter to you forwarding same to you and indicating a desire for a conference between counsel for the plaintiff and defendants concerning this matter.

Affidavit of Kenneth L. Anderson

It is incumbent upon me to state for the record that the plaintiff strongly objects to the Court making any Findings of Fact or Conclusions of Law in this matter since it is a Summary Judgment procedure which does not provide for Findings of Fact and Conclusions of Law. This case was set for trial on July 7, 1966, and counsel was prepared to commence the trial on that date, having subpoenaed in excess of thirty witnesses and having literally hundreds of exhibits to introduce into evidence. A proper demand for jury trial was in the record and this was to be a jury trial. This was not a case for the Court to decide on law and fact and, therefore, is not a case for the making of Findings of Fact and Conclusions of Law.

It is the position of the plaintiff that the record speaks for itself in this case and that on a Motion for Summary Judgment, said record must be viewed in the light most favorable to the plaintiff. I, therefore, feel that a conference with counsel for the defendants would be fruitless and a waste of time. We are, of course, ready, willing and able to attend any additional hearings which the Court might deem it necessary to have concerning this matter.

Respectfully,

WOODWARD, HOBSON & FULTON,
Kenneth L. Anderson

AFFIDAVIT OF A. SCOTT HAMILTON, JR.

Comes the affiant, A. Scott Hamilton, Jr., co-counsel for the plaintiff in the within captioned action and states:

That he attended the hearing on the defendants' motion for summary judgment on July 6, 1966, with his co-counsel, Kenneth L. Anderson. Affiant states that during the course of the argument on the motion for summary judgment, Mr. Anderson pointed out to the Court that certain documents had been produced under orders of the Court for the plaintiff's inspection and copying which had been designated as exhibits upon which the plaintiff relied at the trial of the case and at the motion for summary judgment. Mr.

Anderson pointed out that said documents were not physically a part of the District Court's record but that they had been designated and were being relied upon. Counsel for the defendants did not object to this and the Court indicated that the plaintiff could rely on said documents at the hearing. Affiant states that Mr. Anderson, during the course of his argument on behalf of the plaintiff, referred to and read from a number of the documents relied upon specifically and to others in a general fashion.

Affiant states that at the close of the arguments and after the Court had orally indicated that he would sustain the defendants' motion for summary judgment, Mr. Anderson again pointed out that the documents upon which we relied for the plaintiff were not physically a part of the record and requested leave of the Court to file said documents. Affiant states that the Court orally granted the plaintiff leave to file said documents in affiant's presence at the close of said hearing.

Affiant further states that Mr. Anderson during the course of his argument pointed out to the Court that the plaintiff's evidence included testimony by Mr. Herman Miles to the effect that the home packages being sold by the defendant, U. S. Steel Corporation, Homes Division, to the plaintiff were sold at excessive prices. Mr. Anderson pointed out that this evidence was not in the record but that it was evidence upon which we relied and counsel for the defendants made no objection to Mr. Anderson's presentation of these facts. Affiant states that the affidavit of Herman Miles which was subsequently tendered as so tendered in order to have the facts which had been argued a part of the court's record.

/s/ A. Scott Hamilton, Jr.

Subscribed and sworn to before me this the 13th day of September, 1966.

My commission expires: Oct. 23, 1968.

Elizabeth Benedict
Notary Public
Jefferson County, Kentucky

AFFIDAVIT OF KENNETH L. ANDERSON.

Comes the affiant, Kenneth L. Anderson, and states that he is co-counsel of record for the plaintiff, Fortner Enterprises, Inc., in the within captioned suit. Affiant states that the documents described below and attached to this Affidavit are relevant and material to one or more phases of the above caption suit:

I. Affiant states that the following listed documents were obtained from the defendant, United States Steel Corporation, pursuant to an order of the Court entered on July 30, 1963, requiring the defendant, United States Steel Corporation, to produce documents described in Interrogatory 10 served on United States Steel Corporation on September 26, 1962, in lieu of answering said Interrogatory. The following listed documents are copies of the originals produced for affiant's inspection and copying by United States Steel Corporation. At the time the documents were inspected, certain of the documents were copied by and on behalf of the plaintiff and said documents were identified by placing identifying numbers on the back of each. Plaintiff and defendants were required by the Court's pre-trial order entered on October 18, 1965, to identify or furnish opposing counsel with exhibits which might be used at the trial of this action. According to said pre-trial order, if the exhibits listed, or identified, were not objected to by July 2, 1966, the authenticity of said exhibits was admitted. Affiant states that the following described documents were listed and identified for the benefit of counsel for the defendants on June 22, 1966, in accordance with the Court's pre-trial order of October 18, 1965, and that no objection as to the authenticity of said documents was filed on behalf of the defendants and said documents therefore are admitted as authentic documents in this lawsuit. The documents listed below are identified by the numbers assigned to them at the time they were copied, as described above:

238, 54, 138, 71, 51, 66, 137, 43, 45, 42, 17, 18, 16, 41, 69, 68, 40, 4, 7, 201, 242, 127, 126, 226, 237, 178, 167, 243 through 252.

Affiant states that the above listed documents pertain either to the merits of the anti-trust violation and conspiracy charged against the defendants and/or to the damage done to the plaintiff as a result of the violations alleged.

Affiant states that the following listed documents were also obtained in the manner described above and are made a part of the record to show the prefabricated house packages purchased by the plaintiff from United States Steel Corporation including the shipping date, amount of the purchase price and registered home number for each package purchased. Said documents are identified by the numbers assigned to them at the time of copying as follows:

494, 610, 398, 434, 478, 474, 589, 382, 414, 384, 480, 401, 418, 630, 623, 411, 404, 406, 450, 412, 552, 618, 609, 586, 579, 518, 528, 529, 508, 515, 496, 504, 510, 511, 487, 493, 520, 500, 486, 519, 471, 499, 481, 507, 470, 521, 484, 449, 448, 431, 465, 433, 429, 527, 640, 549, 635, 641, 603, 460, 639, 417, 424, 624, 402, 416, 400, 399, 378.

Affiant states that the following listed documents were likewise obtained from United States Steel Corporation, as described above, and that said documents are invoices or miscellaneous sales orders pertaining to replacement of defective components in the house packages or replacement of components erroneously sent to the plaintiff or to components which were erroneously omitted from original house package shipments. Said documents likewise are listed by the numbers assigned to them at the time they were furnished to plaintiff for copying:

379, 558, 492, 397, 447, 457, 587, 580, 511, 629, 387, 423, 451, 410, 376, 612, 370, 615, 595, 409, 570, 596, 585, 475, 785, 553, 523, 582, 555, 583, 645, 559, 562, 454, 594, 764, 554, 485, 572, 516, 464, 584, 557, 446,

560, 517, 477, 428, 563, 746, 439, 681, 565, 443, 526, 734, 573, 613, 561, 821, 638, 377, 389, 605, 391, 627, 388, 390, 393, 405, 408, 427, 432, 444, 452, 473, 483, 490, 497, 498, 505, 525, 533, 535, 541, 542, 566, 581, 591, 598, 599, 601, 602, 604, 606, 608, 632, 637, 732, 740, 742, 752, 760, 775, 776, 811.

II. Affiant states that the following listed documents were obtained from the defendant, United States Steel Homes Credit Corporation as a result of Interrogatory 7 served on said defendant on September 26, 1962, and the Court's Order entered on August 5, 1963, requiring said defendant to furnish to the plaintiff for inspection and copying the documents described in said Interrogatory 7. In response to said Interrogatory and the Court's Order, the defendant, U. S. Steel Homes Credit Corporation, responded in its Answer to Interrogatories served on the plaintiff on September 5, 1963, that said documents were available for inspection and copying.

Affiant states that pursuant to the Court's Order and the Answer to Interrogatory 7, described above, affiant did inspect said documents and arrange to have said documents copied. At the time the documents were inspected and copied each document was likewise assigned a number by affiant. As set forth in paragraph I of this Affidavit above, the following described documents were likewise identified to counsel for the defendants on June 22, 1966, as exhibits which the plaintiff might use at the trial of this action in accordance with the Court's Pre-trial Order of October 18, 1965. No objection to the authenticity of said documents was made by the defendants on or before July 2, 1966 and the authenticity of said documents therefore stands admitted in accordance with the Court's Pre-trial Order. The documents listed below are likewise identified by the numbers assigned to them at the time they were copied:

C-21, C-23, C-24, C-25, C-6, C-7, C-13, C-11, C-12, C-8, C-5, C-10, C-14, C-9, C-15, C-16, C-17, C-18, C-19, C-20.

Affidavit of Kenneth L. Anderson

III. Affiant states that U. S. Steel Credit Homes Corporation answered Interrogatory 5-a served on it by plaintiff on September 26, 1962 by a letter from counsel for the defendants to affiant dated November 11, 1963, which is attached to this affidavit.

Affiant further states that certain information requested of the defendant, U. S. Steel Homes Credit Corporation, during the depositions of Messrs. William H. Lang and Richard C. Dyas, taken on April 21, 1964, was furnished by counsel for the defendants to affiant by letter dated May 4, 1964, which letter is attached to this affidavit.

IV. Affiant states that the financial statements dated December 31, 1961 and December 31, 1962, of U. S. Steel Homes Credit Corporation were furnished by said defendant to plaintiff in accordance with agreement reached during the taking of the deposition of Mr. Benjamin L. Rawlins on April 21, 1964. Said financial statements are also referred to in the May 4, 1964 letter from counsel for defendants to affiant described in paragraph III above.

Affiant further states that certain copies of Minutes of the Executive Committee and Board of Directors of U. S. Steel Homes Credit Corporation and copies of the Certificate of Incorporation and Amendment thereto, and of the By-Laws of said corporations were likewise furnished affiant by said defendant as a result of the deposition of Mr. Benjamin J. Rawlins, and are attached to this affidavit.

V. Affiant states that the documents attached to this Affidavit identified in the lower right-hand corner as "a" through "l" are true and correct copies of documents obtained by plaintiff from the defendant, U. S. Steel Corporation, said documents having been furnished to plaintiff in response to Interrogatory 16a and 16b served on said defendant on September 26, 1962. Affiant states that said documents were identified to counsel for the defendants on June 22, 1966 as exhibits which the plaintiff might use at the trial of this action in accordance with the Court's Pretrial Order of October 18, 1965. Defendants did not object

to the authenticity of said documents by July 2, 1966, and their authenticity is therefore admitted in accordance with the said Pre-trial Order.

VI. Affiant states that the document attached to this Affidavit marked "m" in the lower right-hand corner is an erection and service bulletin from the files of Fortner Enterprises, Inc. On June 22, 1966, a copy of said document was furnished to counsel for the defendants in accordance with the Court's Pre-trial Order of October 18, 1965. No objection to the authenticity of said document was made by the defendants by July 2, 1966 and the authenticity of said document therefore stands admitted in accordance with the aforesaid Pre-trial Order.

VII. Affiant states that the letter from Chase Barlow Lumber Company to Fortner Enterprises, Inc., dated May 11, 1962, and the letter from Empire Homes Corporation to A. B. Fortner, Jr., dated July 23, 1962 were taken from the files of Fortner Enterprises, Inc. Said documents were exhibited to counsel for the defendants in accordance with the Court's Pre-trial Order of October 18, 1965 and copies of said documents were furnished to counsel for the defendants. No objection to the authenticity of said documents was made by the defendant by July 2, 1966 in accordance with the aforesaid Pre-trial Order and the authenticity of said documents therefore stands admitted.

VIII. Affiant further states that the attached document entitled "Erection and Service for the Field Representative" was furnished to plaintiff by the defendant, United States Steel Corporation in accordance with the deposition of Stanley J. Mack taken on August 17, 1964. Affiant states that said document was not filed with the original of the deposition of Stanley J. Mack through apparent oversight by the reporter. Affiant states that said document was on June 22, 1966, identified to counsel for the defendants as a document upon which the plaintiff might rely at the trial of this action in accordance with the Court's Pre-trial Or-

der of October 18, 1965. No objection to the authenticity of said document was made by the defendants by July 2, 1966, and the authenticity of said document therefore stands admitted in accordance with the aforesaid Pre-trial Order.

IX. Affiant states that certain copies of Minutes of the Finance Committee and Board of Directors of United States Steel Corporation were furnished affiant by said defendant as a result of the deposition of Mr. Benjamin L. Rawlins taken on April 21, 1964, and are attached to this affidavit.

/s/ Kenneth L. Anderson

ORDER.

This case having come on before the Court on October 5, 1966, upon the motions of the plaintiff, Fortner Enterprises, to permit the filing of the affidavit of Mr. Kenneth Anderson sworn to July 15, 1966, with the documents attached thereto, and the affidavit of Mr. Herman Miles sworn to July 14, 1966, with the documents attached thereto, and the Court having heard argument, IT IS ORDERED that said affidavit of Kenneth Anderson dated July 15, 1966, and attached documents, and the affidavit of Herman Miles dated July 14, 1966, and attached documents, are hereby filed of record, and ot the extent necessary the Court's memorandum opinion of September 7, 1966 is so modified.

Plaintiff, Fortner Enterprises, having moved the Court pursuant to Rule 59(a) and (e), Federal Rules of Civil Procedure, to set aside the Memorandum Onion and Judgment dismissing the complaint and amended complaint entered September 7, 1966, and the Judgment entered herein on September 8, 1966, and to reconsider the Court's ruling on the defendants' motion for Summary Judgment and set aside the sustaining of same, and the same was heard upon oral argument, and the Court being sufficiently advised, IT

Order

IS ORDERED that said motion of the plaintiff is overruled, to which the plaintiff excepts.

October 5, 1966

/s/ James F. Gordon
United States District Judge

AFFIDAVIT OF HERMAN MILES.

Affiant, HERMAN MILES, states that he is the President of Crestwood, Inc., a Kentucky corporation, which has as its principal business the construction of residential dwellings in Louisville and Jefferson County, Kentucky. Affiant states that Crestwood, Inc., has been in existence since prior to January 1, 1961 and has been involved in the type of business described above during and prior to said period of time. Affiant states that Crestwood, Inc., was employed by Fortner Enterprises, Inc., to act as the general contractor for the erection of U. S. Steel Homes in Golden Meadows Subdivision in 1961 and 1962. Affiant states that he acted as general supervisor of the construction of said homes at said subdivision in 1961 and 1962 and that he is completely familiar with the components furnished by the Homes Division of U. S. Steel Corporation in their prefabricated houses as delivered to Fortner Enterprises, Inc.

Affiant states that he is also and has been since 1950, President of Cook Lumber Company, Louisville, Kentucky, a company which specializes in selling building materials to builders in Louisville, Jefferson County, Kentucky and the surrounding area. A part of the business of Cook Lumber Company is to figure the cost of building residential dwellings, including those similar to the dwellings manufactured and sold by the Homes Division, U. S. Steel Corporation. As President of Cook Lumber Company, affiant is and has been for many years, completely familiar with the cost of building materials and labor which go into residential dwellings. Affiant states that he has been the builder, through Crestwood, Inc., Apex Homes, Inc., or other-

wise, of at least 450 houses, and that as President of Cook Lumber Company, he has figured or approved figures on at least 2,000 residential dwellings.

Affiant states that he is in particular familiar with the components which made up the B-1 Model furnished by United States Steel Corporation. Affiant states that the B-1 model packages cost Fortner Enterprises, Inc., $3,151.91, as per the copy of the invoice attached to this affidavit.

Affiant states that the materials and labor required to built a house of comparable size and layout to that of the B-1 Model in order to build a conventional home, would have been in 1961 and 1962, the sum of $2,696.48. This cost of labor and materials would duplicate the components furnished for the B-1 Model and includes the cost of building interior walls with wooden studs at sixteen inch intervals and the placing of dry wall on said studs minus the cost of erecting the interior wall panels furnished by United States Steel Corporation since said erection costs were borne by Fortner Enterprises, Inc., and were not included in the house package cost.

Affiant states that the cost to Fortner Enterprises, Inc., in 1961 and 1962 to build at comparable stage a conventional home to that of the B-1 Model furnished by United States Steel Corporation would have been $455.43 less than the charge for the B-1 Model.

Affiant states that Fortner Enterprises, Inc., under date of July 23, 1962, received a bid from Empire Homes Corporation, a prefabricated home manufacturer, located in Louisville, Kentucky, for sale of a prefabricated home package for a home comparable in size and layout to the B-1 Model furnished by United States Steel Corporation. A copy of said quotation is attached to this affidavit.

Affiant states that the basic price, including shipping charges to Golden Meadows Subdivision, in accordance with said quotation, was $1,673.90.

Affidavit of Herman Miles

Affiant states that additional labor and materials to make the Empire Homes Corporation package comparable to that of the B-1 Model would have been $1,034.75, making a total cost to Fortner Enterprises, Inc., in 1961 and 1962 for a comparable home at a comparable stage of development to that of the B-1 Model of $2,708.65. Affiant states that it would have cost Fortner Enterprises Inc., in 1961 and 1962 $443.26 less for the Empire Homes Model at a comparable stage of development as compared to the B-1 Model furnished by United States Steel Corporation.

Affiant states that the conventional home or the Empire Homes model, described above, were and would have been superior in quality to the B-1 Model of United States Steel Corporation because these homes would not have had, and did not have, the defects in them which the B-1 Model had. The conventional home or the Empire Homes model were designed for independent construction of interior walls by use of conventional 2x4 studs, sixteen inches apart, with dry wall nailed thereon, thus eliminating the flimsiness of the walls and the problems in finishing the dry wall which persisted and were inherent in the wall panels furnished with the B-1 Model, which wall panels were made in great part with flimsy metal studs twenty-four inches apart, which in turn, caused cracks in the dry wall seams to appear and instability of the walls.

Affiant states that the folding closet doors to be built in the conventional or Empire Homes houses were of superior quality and would not have resulted in the type of jumping off the track and associated problems related to the doors furnished with the B-1 Model.

Affiant further states that the kitchen-counter tops which would have been built in the conventional or Empire Homes houses were not designed so as to allow water to get to the pressed board base and said tops would not have swollen and cracked as did those furnished with the B-1 Model of United States Steel Corporation.

Affidavit of Herman Miles

Affiant states that the windows included in the affiant's figures for the conventional homes or Empire Homes model were of superior design and quality to the windows furnished with the B-1 Model.

Affiant states that as General Supervisor for the construction of the United States Steel Homes, Fortner Enterprises, in Golden Meadows Subdivision, he personally observed the defective nature or design of the components furnished by United States Steel Corporation, including those described above, and many others.

On the basis of affiant's experience as a builder, his first-hand knowledge of the cost of building materials, supplies and labor and his knowledge of the prefabricated packages sold by United States Steel Corporation and on the basis of the information and figures set forth above, affiant states that in his opinion United States Steel Corporation's charge to Fortner Enterprises, Inc., exceeded a reasonable charge by at least $400.00 per house package sold Fortner Enterprises, Inc., during 1961 and 1962.

Herman Miles

DOCUMENT 434

(USS) **United States Steel Homes Division of United States Steel Corporation**

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 215
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
9-27-61	13845	944	Letter of Credit	62253-1	215	9-26-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62253-1			2996.90
3% Kentucky Tax Applies			89.91
Prepaid Freight			65.10
Net Amount Due			3151.91

Received
Sep 27 '61 Batch No. 17
Data Processing
Center

Enclosed: One warranty form

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3151.91	C	0.52.01.00-1	619973	Cr.	2996.90
				O	0.30.01.80-0	619973	Cr.	89.91
				P	0.30.03.00-1		Cr.	65.10
				Y				

[LETTERHEAD OF EMPIRE HOMES CORPORATION]

Louisville 11, Kentucky
July 23, 1962

Mr. A. B. Fortner, Jr.
Zettwoch-Fortner
4123 S. Third Street
Louisville, Kentucky

Dear Sir:

In accordance with our recent conversation, we are pleased to quote you the following prices on the "Ascot" model:

Basic Price (F.O.B. Golden Meadows)	$1,673.90
Options Available (not included in basic price)	
Sidewall Insulation (factory installed)	43.65
False Gable	60.00
Aluminum Storm Door (front door only)	19.85
Deluxe trim for metal doors	10.50
Roof Shingles — 235# including nails	87.95

The above prices do not include Ky. State Sales Tax. The above prices are subject to a 1% cash discount on the 10th day of the month following shipment. The above package will be fabricated in accordance with the following:

1. Exterior Walls: factory built room size panels for 8' ceiling height, consisting of 2" x 4" studs 16" O.C., single bottom plate, double 2" x 4" top plate kiln dried Construction and Standard Hemlock. ½" insulating sheathing board, Century Aluminum Co., windows series 400 factory installed in accordance with plans, with ½" interior jamb liner factory installed in walls panel. Exterior door open-

ings framed, interior side of wall panels left open for plaster or dry-wall application.

2. Exterior doors, Entrance 3'0 x 6'8" x 1¾" solid core door as per plan; colonial panel door of U.P.P. furnished per plan, rear door 2" x 6'8" x 1¾ Douglas Fir per plan. Doors prehung in jamb assembly complete with trim, weatherstripping and aluminum thresholds with plastic all weather sealer, factory installed 3 hinges and locks.

3. Gable panels, factory built in one piece, 2" x 4" — 16 O.C. with ½" insulating sheathing aluminum gable louver furnished for field installation.

4. Roof Construction, factory built clear span roof trusses built in accordance with attached specifications. ⅜" C.D. plywood roof sheathing with ply-clips furnished.

5. Exterior trim, clear poplar and fir for rake cornice, gutterboard and exterior quarter round. ⅜" A.C. exterior plywood, factory cut furnished for soffit. Wood columns, shutters, flower boxes furnished per plans.

6. Interior partitions, factory built partitions framed of 2" x 4" studs 16" O.C. of kiln dried Construction and Standard Hemlock, thickness of partitions per plan.

7. Interior doors, hinged door 1⅜" flush hardwood veneer S.S.S. finished doors prehung in jamb assembly complete with trim and locks.

8. Bifold doors; American Steel Door — Classic design furnished for field installation complete with hardware and ¾ x ¾ trim, or trim of special design at option of builder. (see details enclosed).

9. Interior trim; clear poplar of special design ½ x 1⅜ interior casing for hinged doors, windows and baseboard furnished in random lengths for field mitre and installation. Separate shoe mould is not furnished.

10. Additional materials furnished, wood closet shelves, wood pole, and shelf supports; all nails, screws, and steel connectors required to assemble Empire Components; #15 roofing felt, and complete erection plans and instructions.

Finishing:

1. All exterior trim including soffit material to have one coat white pigmented toxic sealer.

2. All hinged doors to have manufacturers S.S.S. finish.

3. All interior trim to have one coat white pigmented toxic sealer.

We certainly appreciate the opportunity of working with you on this subdivision, we would like you to know our facilities and know how are at your disposal in assuring you complete success.

Respectfully yours,
EMPIRE HOMES CORPORATION
/s/ E. P. Graas
Vice President

AFFIDAVIT OF KENNETH L. ANDERSON.

Comes the affiant, Kenneth L. Anderson, and states that he is co-counsel of record for the plaintiff, Fortner Enterprises, Inc., in the within capitioned suit. Affiant states that the documents described below and attached to this Affidavit are relevant and material to one or more phases of the above captioned suit and are being filed with this Affidavit pursuant to leave of Court.

I. Affiant states that the following listed documents were obtained from the defendant, United States Steel Corporation, pursuant to an order of the Court entered on July 30, 1963, requiring the defendant, United States Steel Corporation, to produce documents described in Interrogatory 10 served on United States Steel Corporation on September 26, 1962, in lieu of answering said Interrogatory. The following listed documents are copies of the originals produced for affiant's inspection and copying by United States Steel Corporation. At the time the documents were inspected, certain of the documents were copied by and

on behalf of the plaintiff and said documents were identified by placing identifying numbers on the back of each. Plaintiff and defendants were required by the Court's pre-trial order entered on October 18, 1965, to identify or furnish opposing counsel with exhibits which might be used at the trial of this action. According to said pre-trial order, if the exhibits listed, or identified, were not objected to by July 2, 1966, the authenticity of said exhibits was admitted. Affiant states that the following described documents were listed and identified for the benefit of counsel for the defendants on June 22, 1966, in accordance with the Court's pre-trial order of October 18, 1965, and that no objection as to the authenticity of said documents was filed on behalf of the defendants and said documents therefore are admitted as authentic documents in this lawsuit. The documents listed below are identified by the numbers assigned to them at the time they were copied, as described above:

238, 54, 138, 71, 51, 66, 137, 43, 45, 42, 17, 18, 16, 41, 69, 68, 40, 4, 7, 201, 242, 127, 126, 226, 237, 178, 167, 243 through 252.

Affiant states that the above listed documents pertain either to the merits of the anti-trust violation and conspiracy charged against the defendants and/or to the damage done to the plaintiff as a result of the violations alleged.

Affiant states that the following listed documents were also obtained in the manner described above and are made a part of the record to show the prefabricated house packages purchased by the plaintiff from United States Steel Corporation including the shipping date, amount of the purchase price and registered home number for each package purchased. Said documents are identified by the numbers assigned to them at the time of copying as follows:

494, 610, 398, 434, 478, 474, 589, 382, 414, 384, 480, 401, 418, 630, 623, 411, 404, 406, 450, 412, 552, 618, 609, 586, 579, 518, 528, 529, 508, 515, 496, 504, 510, 511, 487,

493, 520, 500, 486, 519, 471, 499, 481, 507, 470, 521, 484, 449, 448, 431, 465, 433, 429, 527, 640, 549, 635, 641, 603, 460, 639, 417, 424, 624, 402, 416, 400, 399, 378

Affiant states that the following listed documents were likewise obtained from United States Steel Corporation, as described above, and that said documents are invoices or miscellaneous sales orders pertaining to replacement of defective components in the house packages or replacement of components erroneously sent to the plaintiff or to components which were erroneously omitted from original house package shipments. Said documents likewise are listed by the numbers assigned to them at the time they were furnished to plaintiff for copying:

379, 558, 492, 397, 447, 457, 587, 580, 511, 629, 387, 423, 451, 410, 376, 612, 370, 615, 595, 409, 570, 596, 585, 475, 785, 553, 523, 582, 555, 583, 645, 559, 562, 454, 594, 764, 554, 485, 572, 516, 464, 584, 557, 446, 560, 517, 477, 428, 563, 746, 439, 681, 565, 443, 526, 734, 573, 613, 561, 821, 638, 377, 389, 605, 391, 627, 388, 390, 393, 405, 408, 427, 432, 444, 452, 473, 483, 490, 497, 498, 505, 525, 533, 535, 541, 542, 566, 581, 591, 598, 599, 601, 602, 604, 606, 608, 632, 637, 732, 740, 742, 752, 760, 755, 776, 811.

II. Affiant states that the following listed documents were obtained from the defendant, United States Steel Homes Credit Corporation as a result of Interrogatory 7 served on said defendant on September 26, 1962, and the Court's Order entered on August 5, 1963, requiring said defendant to furnish to the plaintiff for inspection and copying the documents described in said Interrogatory 7. In response to said Interrogatory and the Court's Order, the defendant, U. S. Steel Homes Credit Corporation, responded in its Answer to Interrogatories served on the plaintiff on September 5, 1963, that said documents were available for inspection and copying.

Affiant states that pursuant to the Court's Order and the Answer to Interrogatory 7, described above, affiant

did inspect said documents and arrange to have said documents copied. At the time the documents were inspected and copied each document was likewise assigned a number by affiant. As set forth in paragraph I of this Affidavit above, the following described documents were likewise identified to counsel for the defendants on June 22, 1966, as exhibits which the plaintiff might use at the trial of this action in accordance with the Court's Pre-trial Order of October 18, 1965. No objection to the authenticity of said documents was made by the defendants on or before July 2, 1966 and the authenticity of said documents therefore stands admitted in accordance with the Court's Pre-trial Order. The documents listed below are likewise identified by the numbers assigned to them at the time they were copied:

C-21, C-23, C-24, C-25, C-6, C-7, C-13, C-11, C-12, C-8, C-5, C-10, C-14, C-9, C-15, C-16, C-17, C-18, C-19, C-20

III. Affiant states that U. S. Steel Credit Corporation answered Interrogatory 5-a served on it by plaintiff on September 26, 1962 by a letter from counsel for the defendants to affiant dated November 11, 1963, which is attached to this affidavit.

Affiant further states that certain information requested of the defendant, U. S. Steel Homes Credit Corporation, during the depositions of Messrs. William H. Lang and Richard C. Dyas, taken on April 21, 1964, was furnished by counsel for the defendants to affiant by letter dated May 4, 1964, which letter is attached to this affidavit.

IV. Affiant states that the financial statements dated December 31, 1961 and December 31, 1962, of U. S. Steel Homes Credit Corporation were furnished by said defendant to plaintiff in accordance with agreement reached during the taking of the deposition of Mr. Benjamin L. Rawlins on April 21, 1964. Said financial statements are also referred to in the May 4, 1964 letter from counsel for defendants to affiant described in pragraph III above.

Affidavit of Kenneth L. Anderson—July 15, 1966

Affiant further states that certain copies of Minutes of the Executive Committee and Board of Directors of U. S. Steel Homes Credit Corporation and copies if the Certificate of Incorporation and Amendment thereto, and of the By-Laws of said corporation were likewise furnished affiant by said defendant as a result of the deposition of Mr. Benjamin J. Rawlins, and are attached to this affidavit.

V. Affiant states that the documents attached to this Affidavit identified in the lower right-hand corner as "a" through "l" are true and correct copies of documents obtained by plaintiff from the defendant, U. S. Steel Corporation, said documents having been furnished to plaintiff in response to Interrogatory 16a and 16b served on said defendant on September 26, 1962. Affiant states that said documents were identified to counsel for the defendants on June 22, 1966 as exhibits which the plaintiff might use at the trial of this action in accordance with the Court's Pretrial Order of October 18, 1965. Defendants did not object to the authenticity of said documents by July 2, 1966, and their authenticity is therefore admitted in accordance with the said Pre-trial Order.

VI. Affiant states that the document attached to this Affidavit marked "m" in the lower right-hand corner is an erection and service bulletin from the files of Fortner Enterprises, Inc. On June 22, 1966, a copy of said document was furnished to counsel for the defendants in accordance with the Court's Pre-trial Order of October 18, 1965. No objection to the authenticity of said document was made by the defendants by July 2, 1966 and the authenticity of said document therefore stands admitted in accordance with the aforesaid Pre-trial Order.

VII. Affiant states that the letter from Chase Barlow Lumber Company to Fortner Enterprises, Inc., dated May 11, 1962, and the letter from Empire Homes Corporation to A. B. Fortner, Jr., dated July 23, 1962 were taken from the files of Fortner Enterprises, Inc. Said documents were

exhibited to counsel for the defendants in accordance with the Court's Pre-trial Order of October 18, 1965 and copies of said documents were furnished to counsel for the defendants. No objection to the authenticity of said documents was made by the defendant on July 2, 1966 in accordance with the aforesaid Pre-trial Order and the authenticity of said documents therefore stands admitted.

VIII. Affiant further states that the attached document entitled "Erection and Service for the Field Representative" was furnished to plaintiff by the defendant, United States Steel Corporation in accordance with the deposition of Stanley J. Mack taken on August 17, 1964. Affiant states that said document was not filed with the original of the deposition of Stanley J. Mack through apparent oversight by the reporter. Affiant states that said document was on June 22, 1966, identified to counsel for the defendants as a document upon which the plaintiff might rely at the trial of this action in accordance with the Court's Pre-trial Order of October 18, 1965. No objection to the authenticity of said document was made by the defendants by July 2, 1966, and the authenticity of said document therefore stands admitted in accordance with the aforesaid Pre-trial Order.

IX. Affiant states that certain copies of Minutes of the Finance Committee and Board of Directors of United States Steel Corporation were furnished affiant by said defendant as a result of the deposition of Mr. Benjamin L. Rawlins taken on April 21, 1964, and are attached to this Affidavit.

To the best of my knowledge, information and belief the foregoing statements are true.

/s/ Kenneth L. Anderson

DOCUMENT 238

UNITED STATES STEEL HOMES
DIVISION
United States (USS) Steel Corporation
2549 Charlestown Road • New Albany, Indiana

August 1, 1962

DAVID H. BOYD
President

Mr. Merrill Russell
Assistant General Solicitor
United States Steel Corporation
525 William Penn Place
Pittsburgh 30, Pennsylvania

Dear Mr. Russell:

Re: Fortner Litigation

The attached material from H. R. Black, Vice President-Sales, will doubtless be of interest by way of providing a perspective of the Louisville home building market and our participation in the past several years.

You will also be interested in knowing to what extent and in what manner representatives of U. S. Steel Homes Division offer the services and assistance of U. S. Steel Credit Corporation to its builder customers such as A. B. Fortner, and others. Enclosed is a copy of that section of our Salesman's Manual which deals with the subject and sets forth the position of our Division insofar as regular sales contacts with customers and prospective customers are concerned. As you know, we regularly do business with franchised builders from whom no financing assistance is requested of U. S. Steel Homes Credit Corporation. Thus far in 1962 these dealers have accounted for 30% of our unit volume.

Beyond the "regular" program of financing assistance offered to qualified builders and negotiated by the Credit

Corporation there exists a program of "special" assistance which provides a greater amount of interim financing participation in selected markets with selected dealers. Fortner represents one of the latter. In these cases our sales department, in an attempt to obtain distribution in a new market or to supplement distribution in an existing market, will discuss the possibility of a building program using U. S. Steel Homes with a dealer who is believed to have the necessary qualifications to be successful. Frequently the builder states a need for substantial interim financing to support the program and after commercial evaluation and a satisfactory preliminary check of credit and reputation, a recommendation is forwarded to U. S. Steel Homes Credit Corporation that negotiations be undertaken to arrive at a satisfactory basis for financing assistance consistent with the conditions which exist in each instance. In certain cases where Credit Corporation states that the amount of assistance provided in relation to the value of the security is beyond the normal limits of a purely financial transaction, Homes Division underwrites the arrangement so as to protect Credit against potential losses. Our agreement with Fortner is in this category.

We do not require builders to utilize the financing service of our Credit Corporation. The relatively high degree of our volume so supported results from requests on the part of the builder rather than pressure on the part of our sales personnel.

In the case of Fortner Enterprises, although our sales department actively sought the business, Mr. Fortner obviously had several choices of prefab manufacturers who are actively shipping homes into the Louisville market, based on the best information we have. In addition there was the conventional method of building which accounts for an estimated 80% of all residential construction in the local market. Local financing institutions such as banks and savings associations also offer financing assistance

to home builders. Loans for this purpose are generally conditioned on approval by the lending institution of specific plans for land, its development, and the houses to be erected and sold. Frequently, the purpose of these loans is to obtain long term mortgages for the financial institution and the builder must direct his home buyers to place their mortgage loans with the institution which is supporting his operation.

If there is any additional information which will be of assistance to you please let me know.

Very truly yours,

/s/ D. H. Boyd
President

DOCUMENT 239

UNITED STATES STEEL HOMES
division of
(USS) United States Steel Corporation

July 31, 1962

TO: Harry R. Black
Vice President-Sales

FROM: Andrew Cowart
Assistant to Vice President-Sales

SUBJECT: LOUISVILLE HOUSING INFORMATION

In accordance with your request, I have assembled the housing data relative to the Louisville marketing area over the last few years. Attached are he following lists:

1. Housing Sarts in Louisville Market.

This information is based on building permits issued in all incorporated areas in Jefferson County.

2. Manufactured Homes in Louisville Market.

This list is comprised of all the home manufacturers who have shipped houses into Louisville, according to the Associated Home Builders of Louisville. This list is complete to the best of their records and knowledge.

3. United States Steel Homes Shipped into Louisville Market.

This is broken down by dealership covering the period from January 1, 1959, to date.

HOUSING STARTS IN LOUISVILLE MARKET

(Based on Building Permits Issued For Single Family Dwelling Units in All Incorporated Areas in Jefferson County.)

1960	1961	1962 to date
3,144	3,201	2,035

HOME MANUFACTURERS SHIPPING INTO THE LOUISVILLE MARKET

Empire Homes
Tru-Bilt Homes
National Homes Corporation
Richmond Homes, Inc.
Scholtz Homes, Inc.
Kingsberry Homes Corporation
Pease Wood Work Company
Inland Homes Corporation
Swift Homes*
Jim Walters Homes Corporation*

The Associated Home Builders of Louisville estimates that at least 20% of housing starts are manufactured homes.

*Shell Homes

UNITED STATES STEEL HOMES SHIPPED INTO LOUISVILLE MARKET

Dealer	1959	1960	1961	1962 to date
A. W. Brant Co.	0	1	0	0
Eagles Company	0	0	7	21
Fortner Enterprises, Inc.	0	3	55	11
O. K. Co.	0	3	7	0
Town & Country	0	0	4	4
TOTAL	0	7	73	36

DOCUMENT 240

CONSTRUCTION FINANCING

It should be quite clear by now that every program has to start with a qualified lender's written commitment to purchase the permanent loans. After you and your dealer have determined the best type of program to use, whether it be one or more of the sections of FHA, VA or conventional financing, you will set about obtaining a "take-out" from the permanent lender.

With that written commitment either in hand or assured, you are then in a position to obtain a construction or interim loan commitment.

Here we will work from the yellow manual headed "Conventional and Construction Financing" starting on Page 31. We'll follow this material in part, and I will explain the Credit Corporation's participation as we proceed.

Read: "An Advantage of Prefabrication"

"The Type of Permanent Loan Commitment"

Let's break down these three types of construction loans and apply the Credit Corporation's programs.

Type #1 — Firm Commitments to owner-occupants

This one is easy. With a firm commitment on the buyer from FHA, VA or a conventional lender, most any bank

will make a construction loan. Usually, the permanent lender or the mortgage company representing a permanent lender, will preclose such a loan, pre-record a note and mortgage and disburse construction money from the permanent loan. This is especially true if it is a conventional loan made by a Savings & Loan Association or Bank. They are generally using their own funds. In the case of FHA or VA firm buyer commitments and where the permanent loan is initiated by a mortgage banker representing some other prime investor, the mortgage company usually has a line of bank credit that will allow them to close the loan, draw the mortgage, make disbursements and "warehouse" the loan until the house is completed and the mortgage can be delivered to the prime investor.

Now, how can the Credit Corporation participate in this type of program? If the dealer so desires, you can set up a request for a construction loan commitment based on presold houses and buyers approved by FHA or VA with loans preclosed. The fee of ½ of 1% plus 6% interest will apply but the construction loans will be set up individually and the fee taken from each loan as it is made. The Credit Corporation does not like this type of program because it means considerably more paper work when individual construction mortgages have to be drawn. They prefer to make the blanket construction loans which we will discuss shortly. I would recommend that you not request less than a $100,000 total commitment for this type of loan.

Type #2 — Firm Commitments to operative builders as permanent mortgagors.

In this case the builder obtains from FHA operative builder commitments which you will hear referred to as OBC's. This is, in effect, a dual commitment. The house can be built under an OBC without a buyer and later converted to an owner-occupant commitment as the buyer is located and approved. Under the terms of this commitment, if no buyer is found, the loan can be closed in the name of the builder in an amount not to exceed 85% of the insurable

amount to an owner-occupant. To illustrate this, let's assume FHA has given the house an appraised value of $10,000. This means that they would insure a loan in an amount up to $9,700 to an approved owner-occupant. If closed in the name of the builder, the maximum loan would be $8,245 or in round figures, $8,200. The builder then makes the regular monthly mortgage payments and is at liberty to rent the house, sell it on a contract for deed, or land contract, or otherwise dispose of it as he sees fit. Some FHA offices are very reticent about making this type of commitment; and in any event, the number of such commitments outstanding will be determined by FHA's experience with the builder and by his financial statement.

Again, as in the case of firm commitments to an owner-occupant, most lenders are willing to make construction loans based on an OBC because they are relatively safe in that they can be closed in the name of the builder.

The Credit Corporation can and will make a construction loan commitment based on an operative builder commitment from FHA and a take-out commitment from a permanent investor. These loans do not have to be closed prior to construction and can be set up in a blanket construction loan to the builder. The amount will not exceed the mortgage amount on the permanent loan to the builder.

The one particular place that I can see a definite need for OBC's is in a town house program. While town house units can be sold individually, the problem arises in the fact that those units are joined together and built as one building. Let's assume that we are planning basically 6-unit buildings. The dealer might sell three of the units and the buyers are approved. There are three unsold. Obviously, you can not construct the three sold units now and the three unsold units later. So, if the dealer had OBC's for one or more buildings of 6 units each, they could be built, closed in his name and then sold to an owner-occupant. This is one case where the Credit Corporation would consider making speculative construction loans to the

builder. He would have to obtain the OBC's and a firm commitment, probably from "Fanny Mae" to purchase the permanent loans.

Let me cite an example: In Rankin, Pennsylvania, which is suburban Pittsburgh, George McShane, our dealer, has successfully bid on a number of lots in an Urban Redevelopment program. He is obtaining 18 operative builder commitments as well as a "Fanny Mae" commitment under their special assistance program as applies to Section 221. One six-unit building will be furnished and used as a model, and two six-unit buildings will be constructed for speculation. We expect that these units will be sold while under construction, but if not, George can close them in his name, then sell or rent them at his leisure. The Credit Corporation has tentatively agreed that they will make the construction loans, and as a building is sold out, replace it with another, etc.

This is specifically an FHA program. VA does not provide for this type of commitment.

Type #3 — Conditional commitment to make the permanent mortgage loan.

This is a commitment from a lender to make a permanent mortgage loan when a buyer is approved, based on an FHA conditional commitment, a VA certificate of Reasonable Value, or a conventional loan plan.

In the normal program this one is most commonly used. A Master FHA Conditional Commitment or VA CRV has been obtained covering a number of lots and houses. Models are built, opened and sales made based on conditional commitment appraised values. Applications for firm buyer commitments are made to FHA or VA and the permanent lender. As previously mentioned, construction money can be obtained when firm buyer approval from all agencies is in hand and the loan is preclosed. But this is cumbersome and time consuming. The dealer can wait sometimes up to two or three months for a buyer commitment from FHA or VA.

Affidavit of Kenneth L. Anderson—July 15, 1966

The Credit Corporation's Blanket Construction Loan is the best answer to this problem. Once it is set up and operating, you will find that it runs smoothly and save considerable time.

Under the blanket construction loan program, you and your dealer will predetermine a conservative estimate of a year's volume of business. Then take the highest anticipated selling price times the number of units planned. The Credit Corporation can go as high as 85% of the appraised value of house and lot, although 80% will usually be sufficient.

As an example, let's say that your dealer anticipates a minimum of 50 sales over a twelve-month period. His price range is planned at $12,000 to $15,000. Using the higher figure of $15,000 he anticipates a maximum sales volume of $750,000 on 50 houses. He further determines that he will require 85% for construction so the loan would be set up for a total of $637,500. This would mean a maximum individual loan of $12,750 dependent upon FHA's appraised value.

You might be asking yourself here, "Why use the top figure of $15,000 when the average sales price will be closer to $13,500?" "Why should he pay an additional fee for the difference when an average amount per house would cover him totally?" The Credit Corporation as previously noted determines their maximum individual construction loan by the total amount divided by the number of units. So, let's suppose we used an average sales price of $13,500. This would mean a maximum individual construction loan of $11,475 which would be fine on the $13,500 house, but what about those that sell at $15,000? Will $11,475 be enough to cover all costs? That's only 76½% of the appraised value. Probably the dealer would have to "dig down" into his working capital for the difference.

Let's just compute the difference in fees based on ½ of 1%. Fifty homes at $15,000 times 85% was $637,500. Fifty homes at $13,500 times 85% is $573,500 a difference of

$63,750, for a difference in fees of only $368.75 which is little enough to pay to insure having enough money to cover construction costs on any house sold.

So the commitment amount is to be $637,500. A blanket construction mortgage is drawn by the Credit Corporation for this amount. This means that the dealer must have or be able to get title to the lots in question so that the Credit Corporation can hold first mortgage rights.

Perhaps the dealer is buying developed lots from a developer as he needs them for construction. It is sometimes possible that the seller will convey title to a number of lots, taking back a second mortgage or deed of trust and subordinating to the Credit Corporation's first mortgage. Their second mortgage could be satisfied as the lots are released, for construction, from the first mortgage.

The ½ of 1% fee is an advance commitment fee which can be paid in cash by the dealer, or it can be added to the loan amount, disbursed to the Credit Corporation and, of course, would bear interest at 6%.

One of the biggest advantages of the blanket construction loan to the dealer is the fact that upon approval of the buyer by an investor, the house can be shipped and construction started. A firm buyer commitment from FHA or VA is not required at this point. At the same time that the application is submitted to FHA or VA, it can go to the investor. If the Credit Corporation is making the construction loan, they will accept an accredited lender's approval or, in the case of their own "standby" will pass on the buyer themselves. As a matter of fact they will approve or reject the application on the day it reaches their office. Upon their approval they will issue a Letter of Credit to the Homes Division clearing the house for shipment. The worst that can happen then, if FHA or VA rejects the buyer, is that the dealer has a speculative house on hand which usually can be readily sold.

As to speculate construction loans, we have discussed one possibility by use of FHA OBC's. But what about making speculative loans from a blanket construction loan?

By policy this type of loan is not available from the Credit Corporation other than on a reasonable number of model homes. This will especially apply to a new dealer with whom we have no experience. After satisfactory experience with a dealer as to market payment of bills, etc., it might be possible to get a small number of spec. loans from the Credit Corporation taken directly from the blanket loan on a "roll over" basis. By this I mean a limited number outstanding at any time. When one is sold, it can be replaced, etc. As stated, this is not necessarily policy, but can be done administratively after a dealer has proved himself and his market.

In setting up a construction loan, particularly with a new dealer, a conservative approach is always best. While you should consider and plan a year's program, it is not always necessary to provide that much construction money at the start. It is not at all difficult, once a program is underway, to get additional funds when needed. As a general rule, I would not request less than $100,000 for construction loans because of certain costs to the Credit Corporation for processing, etc. $100,000 is only 7 or 8 homes anyway, so it would not be worth while to request less.

As to construction loans based on a conventional mortgage take-out, these as previously mentioned are usually on a preclosed basis. We discussed this type of loan as applied to FHA and VA mortgages. If the dealer so desires, I am sure that a blanket construction loan could be set up with written commitment from the lender that he will purchase x number of conventional mortgages up to a total of x number of dollars, with certain specified terms and conditions. In other words, providing much the same protection to the Credit Corporation as an investor commitment on FHA insured or VA guaranteed loans. Of course, with a conventional mortgage take-out FHA and VA compliance inspections would not be made so it would necessitate inspections by the lender or by one of you.

Refer to Page 35 — "Five Basic Construction Loan Arrangements"

Refer to Page 38 — "Cost of Construction Money" and "Financing Costs in your Budget"

The final section in the yellow manual is on Construction Loan Procedure. This section does not need to be covered in detail here. It is good to know these procedures, and you should study this at your leisure, but it is not necessary to know in detail in order to talk about financing to your dealers.

Questions on Construction Financing

1. What is the purpose of a construction or interim loan?

2. What is the first requirement of the Credit Corporation in order to make a construction loan commitment?

3. What is meant by a "blanket construction loan? What are the advantages?

4. What is an OBC? How is this used for speculative loans?

5. How is a construction loan generally handled on a conventional mortgage basis?

LAND ACQUISITION AND DEVELOPMENT FINANCING

Now, we get into the most difficult and varied area of financing — that of acquiring and developing land into buildable lots.

When asked, "What's your land development deal?", you can almost answer with the question, "How high is up?".

So far, in this session, we have discussed: Permanent financing which finances our product for the home owner; construction financing which finances the construction of our product for the dealer. In all cases to this point we have financed our product, and now we have to finance a piece of ground where we hope and expect to build our

product, but, more often than not, the Credit Corporation has to disburse a sizeable amount of money before we even ship one model. There are no buyers waiting in line, there are no houses to sell, there's just a piece of raw earth.

So it is, from our standpoint, a higher risk loan and must be scrutinized much more closely than any other type.

Some of your sales representatives have worked with the Credit Corporation on land financing programs, and some of these programs have been very special. We are going to establish a procedure today for handling this type of program, but basically, you are only going to concern yourselves with the standard acquisition and development loan programs of the Credit Corporation.

Many of you have heard it before, but again, it bears repeating, that is: the three principal factors to determine in making a land development request. They are:

1. Evidence that there is a potential market for the number of homes in question.

2. Substantial credit and financial status sufficient to warrant making the loan.

3. Ability of the dealer organization to merchandise; erect and close out the number of homes in question.

When you are satisfied on all three of the above-mentioned conditions, you have the basis for a program.

Now, let's get into details and mechanics of a standard deal with maybe some ramifications that would still be classed as standard.

If the dealer, or prospective dealer, qualifies in all departments, you may discuss the financing program as follows:

The Credit Corporation can make loans in an amount up to 60% of the combined cost of land and the development of that land or a portion thereof. In other words, if the total estimated cost is $100,000—to use round figures—the Credit Corporation can lend up to $60,000 to develop this land, the dealer putting his $40,000 in first; and, I

might add, the Credit Corporation taking their $60,000 back out first. As a more general rule of thumb, if the dealer has clear title to the land, the Credit Corporation can make the full development loan. This would usually be classed as standard unless for some reason the development costs were too far out of line.

Again, as on a construction loan, you want to consider only a year's program of development on a very conservative basis. In fact, cut the development portion as low as possible, as far as the number of lots is concerned. Then, if the program "takes off" and sales are good, you can always come back for an additional commitment.

Mechanically, when a development loan is made, a first mortgage is placed by the Credit Corporation on the land involved, and a release value per lot is established which will pay back the loan as houses are shipped and lots are released from the blanket mortgage. This release values generally is set up at FHA or VA value for the lot and should pay off the mortgage when 75%, or less, of the lots are used. As an example of what I'm saying here, let's take the theoretical $60,000 loan which was 60% of the total $100,000 cost. Let's say it covers 40 lots. The FHA average value per lot is $2,800 which is used as a release value. This would pay out in approximately 22 lots leaving 18 fully developed lots now owned by the dealer free and clear. When these are sold and closed, the dealer has his $40,000 back with a profit.

Do not try to negotiate the release value, that's the Credit Corporation's business. I don't believe it would hurt anything, however, to suggest to the dealer that the Credit Corporation usually likes to use the commitment value for lots as their release value.

Using the above example then and tying in a construction loan, how does it work?

There will be two notes — one for the land development loan portion and one for the construction loan portion — secured by one mortgage on the land. Let's say that prior

to construction, the full $60,000 has been disbursed for development. On a pro rata basis, that's $1,500 par lot. Since that has already been disbursed, the $1,500 is held out of the construction loan. But we have a release value of $2,800. The difference, or $1,300, comes out of the permanent mortgage when the house is completed and the loan closed. So, if the sale price was $16,000, the construction loan was 85% of that, or $13,600. The $1,500 per lot that was disbursed to the land note is withheld and the dealer has a total of $12,100, exclusive of land cost, with which to build his house. On closing the loan he gets the $16,000 less fees and discounts, less the $12,100 less the $1,300 which was the difference betwen the land loan per lot and the release value. The balance remaining then should represent his gross profit on the house, exclusive of the lot. The lot profit is, of course, delayed until all of the lots are used.

If there is some doubt in your mind about the merits of the deal, particularly as to the market, you should inject a prior sales requirement before disbursement. In other words, proof of the market before the Credit Corporation is exposed to any great extent. With this prior sales requirement, the procedure as far as the Credit Corporation is concerned, is much the same as always. The request is made, the loan negotiated, the agreements signed and the loan can even be closed, however, there would be a conditional clause in the loan agreement stating that the Credit Corporation would disburse for development when x number of sales have been made. Judgment would have to be exercised here as to what percentage of the lots sold would be proof of the market. It could be anything up to 50% of the lots covered in the loan, largely dependent on your knowledge of the market and the dealer.

Now, what would constitute a sale in this case? Just a signed offer to buy won't be enough. A completed application with investor approval of the buyer would be a bona fide sale.

This prior sales requirement can work for the dealer's benefit as well as the Credit Corporation. If there is doubt about the market, but the Credit Corporation disburses on the land, puts in certain improvements and an unsuccessful sales program is launched, the dealer is bound to U. S. Steel Homes for the number of lots required to pay off the mortgage, and the Credit Corporation has funds tied up in the program with small chance of recovery prior to maturity of the loan.

As you know, however, situations alter circumstances. Maybe it would be more practical to get some development in place prior to opening a sales program. In some markets, this seems to be a must. I have not found the Credit Corporation too strict on this prior sales requirement. It could be to your advantage or disadvantage. This you will have to decide.

There are a couple of factors incorporated in the loan agreements during the past year or so that give both you and the Credit Corporation a safety valve. As you probably know, most of the other major manufacturers make development loans in some form or another, but most of them charge a fee of 10% or more in addition to simple interest. We only charge a ½ point fee. This, of course, puts us in a very competitive position, but there have been cases in the past where it worked against us. The ½ point fee and 6% interest being very attractive on land loans, some developers have set up a program with us, borrowed the money, developed lots, then offered a complete development to another investor, paying off the Credit Corporation and never building a house. This accomplishes nothing for us. So, today, the Credit Corporation has them sign a contingent liability note for 5% per year on the principal balance not to exceed 2 years. While this note would be executed, recorded and in effect disbursed, it would not bear interest and would only become effective at the end of the one or two year period if the dealer had not taken the necessary number of houses to retire the loan. Let me

illustrate. Let's go back to the hypothetical case used earlier. The Credit Corporation made a loan in the amount of $60,000 which we determined would be paid off through the shipment of 22 homes. A note would be signed for $3,000 for one year or $6,000 for two years. A program is opened, sales are made and the 22 houses are shipped. The note is then automatically satisfied. But, let's say that the program is opened, sales are not made or are very slow. The loan matures and only a few homes have been shipped. Then the note is collectable. Actually, it can be set up for 5% for one year with an option to renew at 10% for the second year and waiving the 5% for the first. Then, if 22 homes are shipped before the end of the second year, no penalty is administered.

Does this approach sound a little rough on the dealer? I don't think so. Remember, he helped to determine a conservative one year program of development, in this case 40 lots. But the loan is paid back in only 22 lots. All you're asking him to do is produce in two years what he said could be done in less than one. Do you see the lever that this gives you? He is more likely to push hard to sell our houses when there is a penalty if he doesn't. People like to take the line of least resistance. Before this clause was put in, a program could be opened, and start slowly. It was easy to say, "It's obviously the product, we'll go back to conventional or something else." Now a program is opened, sales start slowly and the thinking is, "Let's bring in a new model," or "Let's improve on our advertising." I think it gives us an excellent sales tool. It is not necessary for you to try to explain this to your dealer or prospect. It can be a matter of negotiation between the dealer and the Credit Corporation. I just wanted you to be aware of it.

Then another safety valve being used by the Credit Corporation is the personal guarantee of repayment of the loan by the principals. In the case of the small dealer operating as a proprietorship, this is not necessary. But most builders, today, have one or more corporations with which

they operate. More often than not, when putting together a new subdivision or program, they will form a new corporation to handle it. Also, quite often, it is in effect a "paper" corporation with only $500 in assets. As the Credit Corporation puts it, "we are doing business with a piece of paper in the Secretary of State's office," and that is true as far as personal, legal responsibilty is concerned. So we ask for a personal guaranty, not so much for additional financial security on the loan, but rather to hold an individual, or individuals, responsible in the event that a deal "bogs down", or "goes sour". They just can't walk away from it so easily then.

It would be good practice for you to ask the dealer or prospect if personal guaranties would be available and to report this fact in your request. It could be the determining factor in making the loan.

A further safety margin is afforded the Credit Corporation if security in addition to the number of lots to be developed can be put into the mortgage. Let's say that the aforementioned 40 lots are platted, approved and recorded, and that's what we're basing our program on; but additionally, the dealer owns 20 acres adjoining the project. By all means, get this 20 acres into the mortgage. It enhances the security, reduces exposure and gives you, psychologically, at least, a lock on the additional acreage for your houses.

So, to recap, a standard land deal means simply — up to 60% of the combined cost of land and development or if the dealer owns the land, 100% of the development cost. This on a one or two year basis at ½ of 1% fee plus 6% interest. Loan to be paid back in 75% or fewer of the lots to be developed dependent upon a release value per lot based usually on the estimated average valuation anticipated from FHA or VA. It's simple, isn't it?

Now, let's consider a variation or two that we might still class as standard. Let's assume, in one instance, that the dealer has bought the ground, made a down payment

and title has been conveyed to him, subject to a mortgage held by the seller. In many cases, we have been able to get the seller to subordinate his mortgage to a first mortgage held by the Credit Corporation. Simply, the Credit Corporation holds a first mortgage and the seller holds a second mortgage. They could then, all other things being equal, come in for all of the development costs, and still have a standard deal.

Another way that they might agree to lend a little more than the standard amount would be through the use of a prior sale requirement high enough to pay off the loan. Let's say, for example, that the total cost of acquisition and development is $100,000 on 40 lots and the dealer needs $75,000. He might get the model home lots approved, open a sales program, set up a release value of $3,500 per lot, and upon receipt of 21+ sales, pay off the ground and develop the lots. The Credit Corporation's pay back is then more or less assured.

The best approach, for the time being at least, if you feel that a request deviates too much from the standard program, is to advise Stan Mack, who will go through the necessary channels to have one of us contact the dealer with you. First, I would attempt to get it in to standard proportions; then, if it is not possible to do that, put in a special request which would go through a different process.

When the sales office receives a standard financing request, they submit it to Treasury for their check, then directly to the Credit Corporation who then can contact the dealer and negotiate the loan. But on a special deal, one of the three developmental men will submit a special memorandum request to Harry Black who will review it, put his recommendations on it and send it to Mr. Boyd. Mr. Boyd then will ask Treasury to check it for credit and financial status. When he receives their approval, he will then add his letter of recommendation and send it to the Credit Corporation. Mr. Lang and "Dick" Dyas will review it and upon tentative approval, Dyas, Bill Rollins or Bill Leonard will then negotiate the loan with the dealer.

Affidavit of Kenneth L. Anderson—July 15, 1966

The original intent of the special financing program was to allow us some freedom in trying to make a larger volume deal. In fact, at first, we talked only of those programs of 100 or more homes per year. We have since broadened this considerably, however, we should still stay pretty closely with the standard program on anything less than 25 units per year.

It is always best, if possible, to try to find out what the dealer requires and if possible, adjust our program to meet his needs, rather than to "lay-out" a set of rules which might not fit and might cause the dealer or prospect to lose interest. Further, you might say to him that we would go up to 60% and he only requires 40 or 50%, in which case, he might try to get 60%. If you are penned down to a definite answer, you might then just spell out the standard terms and then tell him, "if this doesn't fit your program, you tell us what is needed and we'll see what can be done". You should make it clear to a new or prospective dealer who is applying for his first loan from the Credit Corporation that they will not consider lending 100% of the security. That is, the dealer must have some equity in one form or another in the deal. Always point out too, that after we have good experience with each other it will not be difficult to negotiate a much "longer" deal with the Credit Corporation. Experience is the strongest word in their language.

There have been a good number of special loans made in the past three years, each one a little different, but each one with some merit. Conversely, in some cases the Credit Corporation turned down what seemed to be a good real estate loan, but didn't look as though it would produce home shipments. I know of one case where there was a choice piece of ground, in an excellent location, supported by a strong market. The requested loan was to be guaranteed by a multi-million dollar corporation. From a pure real estate investment standpoint, it was excellent. However, we chose not to recommend the loan to the Credit Corpo-

ration because we couldn't see a full time qualified general manager or anyone in the organization with the ability or the time to merchandise our homes. In other words, I just didn't see how we would get very many houses shipped. Sure, the loan was secure, and the Credit Corporation would be paid back, but we wouldn't accomplish our only purpose in making the loan and that is shipping houses. That's why the Credit Corporation exists and that should be our first consideration before requesting financing assistance.

Now, as to a straight land acquisition loan, it will nearly always be tied in with a development program. Just to help acquire real estate and hold it for a future market is not the purpose of the Credit Corporation. Certainly, there are exceptions, even though rare. The exception might be the well-established existing dealer with a successful, going program who has an opportunity to acquire land for future use at a favorable price. The standard program here is 50-50 or matching dollars with the dealer.

There may be situations where the dealer can buy a block of fully developed lots in a subdivision. This would be classed as a land acquisition loan and again the standard would apply. That is, up to 50% of the acquisition cost to the dealer. This, of course, would differ from a land inventory loan in that the lots would be ready for immediate use.

Remember that the first consideration of the Sales Department before requesting any type of financing assistance in the commercial value of the program to the Homes Division. Financing is simply one of several tools that we have available for securing more business. Don't waste your time with a lot of insignificant deals that don't have much chance for any appreciable volume. Let's concentrate on the hundreds of good, qualified builders who could and would use our products and services if they only knew about them.

EXAMPLE

Now, let's take a hypothetical case — parts of which we have been discussing — and tie it down into one complete program, filling out the financial assistance request and completing the submission.

This is a new dealer just being franchised. He has 40 undeveloped lots, FHA approved, with his final subdivision report back from FHA. He has clear title to the 40 lots and has title to 20 additional acres adjoining that are subject to a mortgage to the seller. The engineer has estimated $1,500 per lot for improvements and the ground cost was $1,000 per lot. He is dealing with ABC Mortgage Co., an approved FHA lender and FNMA approved seller, but whose investors will not now make prior commitments for a group of loans.

We have checked the market and have determined that the wage categories, the location and the market needs call for houses in the $13,000 to $16,000 range. Construction money is available locally but is costing 1½ points plus interest.

So we set up a request for a "standby" commitment in the amount of $600,000. The total maximum sales price x 40 units would be $640,000. But this is for permanent mortgage money so the $600,000 will be more than ample. It's a 203b program so 30 year terms are requested. The minimum price acceptable will be current FNMA prices. Desired source is the Credit Corporation and local market conditions show that prior commitments are not presently available.

For construction financing, the dealer wants 85% of appraised value so we use the highest anticipated sales price. We have 40 lots @ 85% of $16,000 for a total amount of $544,000.

Then we have the 40 lots to be developed. The cost of the land was $40,000 and @ $1,500 per lot for development, the loan amount requested is $60,000. Under the block labeled "Type of Improvement for Above Lots Only",

you will break it down as to streets, curb and gutters, sewer, water, etc. showing estimated cost for each amount in place, if any, and remaining work in dollars and cents. Or you may attach an engineer's estimate sheet.

Then complete the Project Information Section showing 40 lots plus 20 acres — 40 lots covered by this request and they are owned free and clear.

The subdivision is locally approved and recorded and has formal approval from FHA. FHA Conditionals are applied for and no sales contracts have been made. In the box labeled "Firm Mortgage Commitments on Hand," simply write, "as per Section A." The "Status of Utilities, etc." would show utilities and streets to be installed.

On the back side on the top line write, "as per Section C" and on the next line "as per Section B."

The estimated cost of the average lot is $2,500 and valuation is $2,800. The lots will sell at the FHA valuation.

Now, show the models to be offered and the prices along with estimated costs. Then estimate the date for opening and the date for shipping the first houses, along with estimated completion date for the program.

The next box shows the conditions, trends, etc. in the market. Here, write in what we discussed earlier as to wages, location, etc. Then put your recommendations in the next box, sign it, date it, include the necessary exhibits, send it to Stan and you're in business.

Include the following exhibits:

1. Financing statements not over 90 days old (unless current statement is in Treasury files).
2. Plat of subdivision with recording information if possible.
3. Map of area, locating the subdivision.
4. Engineer's cost estimate for development.
5. Photos of typical surrounding homes. (Not necessary, but helpful)

6. Your cover memorandum giving background information of dealership and principals, the project and why it is potentially good, then your recommendation.

7. Copy of Prospective Dealer Contact Report.

Of course, the above case was easy; in fact, about perfect, but it illustrates the way a standard deal should be handled. The more cases you submit the more you'll learn about it. Just stick to the fundamentals for now and don't commit yourselves to anything you you'll get by.

Stan asked me to cover something about setting up accounts, servicing, etc. A year or two ago, I wrote and presented some material on this, and it still applies. Many of you have copies of this material, but I have copies here for those who don't. I think we'll quickly run over this, then have a question session after which we'll have a written exam on material covered since Monday.

3/27/61
df

DOCUMENT 54

Dec. 22, 1959

Mr. Harry R. Black — General Manager - Sales
N. G. Day — Manager - Field Sales
Request for Special Financial Assistance - Fortner Enterprises

Dealer and Borrower:

Fortner Enterprises is a proposed new borrower operating in the Louisville, Kentucky area. This is a corporation solely owned by Mr. A. B. Fortner, Jr., President of Zettwoch Fortner Corporation, which company is actively engaged in home building, land development and the real estate business. Fortner Enterprises is presently an inactive corporation with limited assets. They propose, however, to transfer assets from another corporation, to

Fortner Enterprises. These assets will consist of 96 undeveloped lots and 3 developed lots with a total value of approximately $112,000 and a liability of $56,000 which represents one-half of the land value.

Mr. Fortner, along with another individual, has been building in a project known as Golden Meadow Subdivision, and to date has completed 250 homes in the $10,000 to $15,900 class. The value and quality is excellent.

We have been in contact with Mr. Fortner and his associates for the past three weeks. They have attended one of our seminars, visited our plant, and are presently assembling cost figures on our product.

Mr. Fortner has been in the real estate and development business since 1939, and is very highly regarded in Louisville. Built personally about 75 homes — has mostly developed ground for "captive" builders, and merchandised and sold the homes on about 4,000 lots.

Project and Location:

The project is just off Dixie Highway, approximately eleven miles from downtown Louisville. Immediately served by large shopping area, schools and transportation. It is very well situated with fast access to downtown Louisville.

The land in question totals 99 lots — 96 undeveloped and 3 developed. This is presently owned by Iroquois Development, Inc., of which Mr. Fortner owns a one-half interest. It will be necessary for Mr. Fortner to purchase the remaining one-half interest in the corporation in order to transfer title to the borrowing corporation.

In addition to the aforementioned land, Mr. Fortner is optioning an adjoining 90 acre tract for future development and probable construction of our homes. It is planned to build homes in the $10,000 to $11,500 class. It is estimated that FHA value on the lots will be approximately $2,200.

Financing:

Final figures for cost of development have not yet been established. Based on past experience of the developer, the

figures are very close to accurate. A release value equal to FHA valuation of the lots was suggested by the Dealer. Current valuations are approximately $2,200 per lot.

Estimated Breakdown

96 Lots @ $1,100	$105,600
3 Lots @ $2,100	6,300
Total	$111,900
Cost to develop 96 Lots @ $1,000	96,000
Total Land and Development	$207,900
Borrower's equity in land	55,950
NET REQUIRED	$151,950

The area is partially surrounded by new homes, and all the necessary utilities are to the site. The suggested $2,200 release value would pay back the entire loan over the first 69 lots. The 99 home sales would be considered as a year's program or less.

It is planned to erect 3 models on the three improved lots as soon as FHA conditionals are received, and a sales program opened at that time.

It is acknowledged that their request for financing is definitely in the category of special financing, but there are many advantageous features which, I feel, make the program possible, and I would recommend your consideration.

Recommendation of General Manager - Sales

It is the recommendation of the Sales Department that this request be forwarded to the Credit Corporation for their consideration in granting the necessary financing to establish this new program.

In addition to Mr. Day's and Mr. Grayson's examination of this prospective dealer, I too have had the oppor-

tunity to discuss this program in full with the principals as well as our own fieldmen, and find that from a commercial view point, the program is most desirable. Although in discussing a program such as this, we make every effort to avoid complete details of the financing, it is natural that some figures are suggested by the dealer, and these we pass on purely as a guide for what we think it will take to establish the program. It is evident that models could be erected possibly within the next thirty to sixty days, and a sales program opened at that time. This, of course, would be most beneficial because the Louisville area can accomplish winter building without too much difficulty.

This new dealership will not interfere with the program which we are currently working on with Town & Country Homes. It is approximately fifteen miles away from Town & Country's contemplated project and in an entirely different section of the city. Fortner's program will be in the $11,000 to $13,000 price range whereas Town & Country Homes will be in the $15,000 to $20,000 price range.

There is attached a copy of credit information which I have discussed with Mr. Kestner today. Mr. Kestner is making an immediate check of the bank and trade references and is also ordering a Dunn and Bradstreet report. This information should be available through Mr. Kestner's office no later than Monday, December 28.

The Sales Department would appreciate the opportunity of meeting with the Credit Corporation and the dealer to discuss this program as soon as possible.

The franchise has been signed by the builder, and this along with an operating statement of the borrower will be available to the Credit Corporation at the time of their discussion with Fortner Enterprises.

/s/ Harry R. Black
General Manager - Sales

Affidavit of Kenneth L. Anderson—July 15, 1966

FORTNER ENTERPRISES - Franchise Applicant
Zettwoch Fortner Corporation
4125 South Third
Louisville, Kentucky
A. B. Fortner, Jr. - Principal
Request Dunn and Bradstreet report on above.

BANK REFERENCES

First National Bank of Louisville
16 South Fifth Street
Louisville, Kentucky

Citizens Fidelity Bank & Trust Co.
437 West Jefferson
Louisville, Kentucky

TRADE REFERENCES

The Louisville Home Supply Co.
3720 Seventh Street Road
Louisville, Kentucky

Louisville Mortgage Service Co.
215 South Fifth Street
Louisville, Kentucky

Standard Auto Co.
728 South Fourth Street
Louisville, Kentucky

DOCUMENT 138

December 30, 1959

Mr. W. H. Lang, President and Treasurer
U. S. Steel Homes Credit Corporation
71 Broadway
New York 6, New York

Fortner Enterprises, Louisville, Kentucky

Dear Mr. Lang:

Attached hereto is a copy of the Sales Department's recommendation to this office concerning Fortner Enter-

prises, associated with Zettwoch Fortner Corporation, Louisville, Kentucky.

After reviewing this recommendation and the background financial information available from the Treasury Department, it is my judgment that this builder warrants further consideration of the financial aspects of the attached.

I would recommend, therefore, that the Credit Corporation enter into financial negotiations with Fortner Enterprises, subject to the usual prudent judgment and the hope that an agreement can be reached which will assist in providing additional shipments in the Louisville (Kentucky) area for 1960.

Copies of the detailed back-up material are being forwarded promptly to Mr. Dyas through our Treasury Department.

Yours very truly,

Enc. President

CC: H. R. Black

W. L. Lieber - Please forward one of the attached copies with other material to Dick Dyas.

DOCUMENT 71

LETTERHEAD OF U.S. STEEL HOMES CREDIT CORPORATION

Mr. H. R. Black, General Manager - Sales
United States Steel Homes Division
Charlestown Road
New Albany, Indiana

Dear Mr. Black:

Re: Fortner Enterprises
Louisville, Kentucky

Enclosed herewith for your review is a copy of memorandum covering the main points of the discussion with Mr. Fortner in the meeting of January 6, 1960.

You will note that the program involves substantial changes from that originally proposed by Mr. Fortner and, therefore, if same is acceptable to you on the basis now proposed would you please so indicate on the attached copy of this letter.

Very truly yours,

W. L. Rollins
District Representative

WLR/df

DOCUMENT 51

January 7, 1960

Re: Fortner Enterprises
Louisville, Kentucky

On January 6, 1960, a meeting was held with Mr. A. B. Fortner, Jr., attended by Messrs. Day, Grayson and Cowart of the Homes Division, and Dyas and Rollins of the Credit Corporation, for the purpose of discussing the financial request which was the subject of Mr. Boyd's letter of December 30, 1959.

At such meeting it developed that Mr. Fortner had completely changed his proposal as originally made to the extent that he desires a loan commitment covering the entire project of 155 undeveloped lots and approximately 31 fully developed lots. Mr. Fortner indicated that the only way he would proceed in this undertaking would be on the following basis:

1. Financing for the acquisition by Fortner Enterprise from Iroquois Development Corp., of 155 undeveloped lots at a cost of $1,100 per lot, or $170,500, with Fortner's equity to be the 31 fully developed lots at $2,000 per lot, or $62,000.

2. Financing for the development of the 155 lots at $900 per lot, or $139,500. The initial development to be undertaken on 16 lots, at a cost of $14,400 which, together with the 31 improved lots will provide Fortner with 47

fully improved lots. When sales are in hand on one-half of the improved lots, development can be undertaken on the 139 remaining undeveloped lots.

3. Construction financing on the total of 186 lots aggregating approximately $1,400,000, to be disbursed in stages as construction progresses and as houses are contracted for sale.

4. A "ride the FHA market" take-out commitment on the 186 lots, coming to approximately $2,000,000.

The land in question is located in an existing subdivision, Golden Meadows, where some 250 houses have been completed to date. The property was acquired by Iroquois Development Corp., five years ago (after having been optioned three years previously) at a cost of $1,100 per acre as farm land. There can, of course, be no question as to the appreciation in land values after the installation of off-site utilities and the conversion of the tract from raw land to an existing subdivision of several hundred houses.

Should it be decided to proceed on the basis requested by Mr. Fortner, it would be contingent upon a prior determination by him that our house can be profitably built and the receipt of satisfactory financial statement of Fortner Enterprise.

W. L. Rollins
District Representative

DOCUMENT 66

MEMORANDUM

March 1, 1960

TO: Mr. R. C. Dyas
FROM: Mr. W. L. Rollins
SUBJECT: Fortner Enterprises, Inc.
Louisville, Kentucky

In connection with the proposed loan to the subject company copies of the loan documents to be executed in

the closing thereof were forwarded to Mr. Fortner, for his review, with my letters of February 19, 1960.

As a result of a call received from Mr. Fortner on February 26, 1960, a meeting was held today in the office of Mr. Samuel Steinfeld, attended by the following:

Mr. Fortner
Mr. Samuel Steinfeld, Attorney for Mr. Fortner
Mr. Edward Horn, Louisville Mortgage Services
Mr. Paul Grayson, U. S. Steel Homes Division
Mr. Rollins and Mr. Leonard, Credit Corporation

The purpose of such meeting was to review the documents and to answer questions that had arisen in connection therewith at the time same were previously reviewed by Messrs. Fortner, Steinfeld, and Horn.

With the exception of a few minor questions relative to wording contained in the Loan Agreement (the changing of which will pose no problem and will in no way affect Credit's position) the gentlemen seemed well satisfied with the documents as written.

The principal question raised, and one which seemed to result in an impasse, is that of the maturity of the loan. As you are aware, the loan provides for financing to assist in the acquisition, development and construction of houses on 186 lots, with the maturity of the Construction Note being 12 months and the Land Note 18 months, which is in accordance with our standard practice. Mr. Fortner's position, supported by both his attorney and Mr. Horn, is that he cannot enter into the proposed loan as written because of the questionable ability to market and construct 186 houses within the 12 months' period as called for under the terms of the agreement. While he proposes to put forth his best efforts to assure the success of the project, he stated he is unwilling to enter into the same unless he can have at least a two year program.

We explored the possibility of reducing the loan by cutting back the number of lots but according to Mr.

Fortner this is not possible by reason of the fact that in order to obtain the land he must acquire it all at one time; in view of this fact any attempt to reduce the development and construction to a reasonable number of lots would result in excessive release values being necessary to liquidate the Land Note over the reduced number of lots.

In view of Mr. Fortner's position that the program would not be acceptable unless a two year maturity could be established I informed him that I was in no position to give any indication as to the possibility of obtaining authorization therefor it being our standard policy to restrict such financing to a one year program; that the only course I could follow would be to submit his views to management for a policy decision.

CC: Messrs. H. R. Black
P. B. Grayson
W. J. Leonard

DOCUMENT 137

MEMORANDUM

March 3, 1960

TO: W. H. Lang
FROM: R. C. Dyas
SUBJECT: Fortner Enterprises, Inc.
Louisville, Kentucky
Acquisition and Development, $310,000

I have discussed the subject application by telephone with Mr. Boyd, pointing out the possibility that the dealer's lack of experience in the use of our product might result in a failure of this project and the eventual acquisition of the project real estate by the Credit Corporation.

Mr. Boyd expressed his willingness to assure the Credit Corporation that in the event the project real estate should be so acquired, the Homes Division would take immediate

action to place the property into production, either through activity by the Construction Department or some other dealer in the area, or a combination of both.

Mr. Boyd understands that maturity of the loan must be sufficiently extended to provide for a two-year building program.

cc: D. H. Boyd

DOCUMENT 43

Sept. 19, 1960

Mr. H. R. Black — General Manager - Sales
N. G. Day — Manager - Field Sales
Fortner Enterprises, Inc. - Special Financing

On December 22, 1959, I submitted a financing request to you on behalf of Fortner Enterprises, Inc., Louisville, Kentucky, covering 186 lots in Golden Meadows Subdivision. At that time the land in question was owned by a corporation known as Iroquois Development, Inc. with ownership held equally between Mr. A. B. Fortner, Jr. and Mr. William RoBards. Mr. RoBards had agreed to sell his interest to Mr. Fortner and an agreement with the Credit Corporation was reached on that basis.

Models were selected, costs established and submissions were made to FHA for model homes for which satisfactory commitments were eventually received.

It appeared that the program was ready to go, then Mr. RoBards decided that it looked too good for him to relinquish his interest. This caused considerable delay and the agreement had to be extended and eventually allowed to expire.

Since they were at an impasse, Mr. Fortner decided to sell his interest to Mr. RoBards, subject to Mr. RoBards' ability to obtain the same financing arrangements from the Credit Corporation. As you know, our Treasury De-

partment investigated and found that they could not recommend Mr. RoBards for financing.

Since that time I have met with both principals and Mr. RoBards has now definitely agreed to sell his interest to Mr. Fortner and step out of the "deal" entirely.

Therefore, in a pursuant meeting with Mr. Fortner, he has stated that it is his desire to reinstate the original request and agreement, and if approved, proceed at once on construction of models and opening of a sales program.

You will recall that there are 31 lots completely developed and ready to use, with 155 to be developed. It is strongly felt that the 31 homes can be sold and shipped in 1960 with the 155 for a 1961 program. This will still give us our fastest entry into the Louisville market this year.

I have met and discussed this program with Mr. Fortner on several occasions and am convinced of his ability, enthusiasm and sincerity. He has the building organization, sales and promotion people, and financing know-how to make this program successful.

I respectfully request your earliest consideration of his request and your recommendations to the Credit Corporation.

/s/ Neil G. Day.
N. G. Day
Manager - Field Sales

NGD/df

DOCUMENT 45

LETTERHEAD OF UNITED STATES STEEL HOMES

Sept. 19, 1960

INTER-OFFICE MEMORANDUM

To: Mr. Harry R. Black, General Manager - Sales
From: N. G. Day, Manager - Field Sales
Subject: Fortner Enterprises, Inc - Special Financing

Affidavit of Kenneth L. Anderson—July 15, 1966

On December 22, 1959, I submitted a financing request to you on behalf of Fortner Enterprises, Inc., Louisville, Kentucky, covering 186 lots in Golden Meadows Subdivision. At that time the land in question was owned by a corporation known as Iroquois Development, Inc. with ownership held equally between Mr. A. B. Fortner, Jr. and Mr. William RoBards. Mr. RoBards had agreed to sell his interest to Mr. Fortner and an agreement with the Credit Corporation was reached on that basis.

Models were selected, costs established and submissions were made to FHA for model homes for which satisfactory commitments were eventually received.

It appeared that the program was ready to go, then Mr. RoBards decided that it looked too good for him to relinquish his interest. This caused considerable delay and the agreement had to be extended and eventually allowed to expire.

Since they were at an impasse, Mr. Fortner decided to sell his interest to Mr. RoBards, subject to Mr. RoBards' ability to obtain the same financing arrangements from the Credit Corporation. As you know, our Treasury Department investigated and found that they could not recommend Mr. RoBards for financing.

Since that time I have met with both principals and Mr. RoBards has now definitely agreed to sell his interest to Mr. Fortner and step out of the "deal" entirely.

Therefore, in a pursuant meeting with Mr. Fortner, he has stated that it is his desire to reinstate the original request and agreement, and if approved, proceed at once on construction of models and opening of a sales program.

You will recall that there are 31 lots completely developed and ready to use, with 155 to be developed. It is strongly felt that the 31 homes can be sold and shipped in 1960, with the 135 for a 1961 program. This will still give us our fastest entry into the Louisville market this year.

I have met and discussed this program with Mr. Fortner on several occasions and am convinced of his ability, en-

thusiasm and sincerity. He has the building organization, sales and promotion people, and financing know-how to make this program successful.

I respectfully request your earliest consideration of his request and your recommendations to the Credit Corporation.

N. G. Day
Manager - Field Sales

NGD/df

DOCUMENT 4

September 22, 1960

W. L. Rollins, Asst. General Manager - Credit Corporation
H. R. Black, General Manager - Sales
Fortner Enterprises, Inc.

Dear Bill:

Attached is a resubmission of the original request on behalf of Fortner Enterprises, Inc., Louisville, Kentucky. I believe the attached memorandum by Mr. Day and the letter by Mr. Fortner clearly explains the situation as of this date.

Although this was in the category of special financing I have mentioned it to Mr. Boyd and whereas we are simply requesting a reactivation of an original commitment by the Credit Corporation which had been recommended by Mr. Boyd and others concerned, it is hoped that the Credit Corporation is in a position to make a direct contact.

Maybe the time element in this program has worked in our favor since we now have commitments in hand covering the 31 lots in question and if a financing situation can be consummated this would appear to be our fastest entry into the fall market in Louisville and possibly winter and spring building.

I realize that you desire to have Dick review this program with you once again and if it is possible we hope this can be accomplished during the week of September 16. I will be in New Albany on September 28 and 29 and if I can be of any help I will be happy to meet with you and Dick and Fortner, if necessary.

Thanks for your consideration in this matter.

HRB/mip
cc: W. L. Lichor
D. H. Boyd

DOCUMENT 17

May 29, 1961

Mr. Harry R. Black
N. G. Day
Financing Request - Fortner Enterprises, Inc.

Dealer and Borrower:

The subject dealer, operating in Louisville, Kentucky, is a recently franchised dealer who is presently working with the Credit Corporation under a land development and construction loan agreement. Models and a sales program were opened in March, and to date the dealer reports over 40 firm sales, with several buyers having been approved and others in process. Production houses are now being shipped.

The dealer recently re-acquired an additional group of lots in Golden Meadows Subdivision and has six of our homes sold in this area even though no effort has been made in that direction.

Paul Grayson and I met with the dealer on May 19, to discuss requirements on this group of lots.

Project:

The lots are located within Golden Meadows Subdivision, a short distance from Fortner's existing program.

They are fully developed, FHA approved and ready for use.

When the original loan for development and construction was made and closed, these lots were not available and were no longer owned by Iroquois Developers, Inc. or Fortner Enterprises, Inc. They had been sold, on a contract, to Apex Homes, Inc., Herman Miles, President. At that time, it was Mr. Miles' intent to build conventional homes on these lots. Since that time, Mr. Miles has become general superintendent of Fortner Enterprises, Inc., United States Steel Homes project, and did not wish to build homes on his own in competition with Fortner, so on March 17, this year, the contract expired and the lots reverted to Iroquois Developers, Inc. It is now Mr. Fortner's desire to obtain full control of the lots in the name of Fortner Enterprises, Inc. and to build United States Steel Homes on the balance.

A mortgage of approximately $29,000 is held on these lots by a subsidiary of Louisville Mortgage Service. They have made a commitment to release 4 lots and make construction loans on four of the six homes that are sold which will reduce the mortgage to approximately $24,000.

Financing:

In our meeting with Mr. Fortner, he stated that due to serious delays in getting his United States Steel Homes program started, and further delays in starting the sold houses, because of extremely wet weather all spring, and due to the fact that they had gone over their budget for advertising, furnishings, promotional materials, etc., by a considerable amount, he is in somewhat of a bind for capital.

There were originally 36 lots in the subject group. 34 of which were sold to Apex and 2 to another builder, all of which are now available. Four of these being financed for construction of our homes, leaves 32 to be picked up.

Mr. Fortner's request is as follows:

Balance of mortgage on 32 lots	$24,000
Additional capital required	30,000
Total	$54,000

The FHA valuation on the lots in averaging $2,200 and Mr. Fortner suggested this as a release value which is the same as the previous, existing agreement. This would pay off the loan in 24 plus lot release.

These lots are ready for use. Six sales have been made, 2 of which will apply to the requested loan. This program would give us a very definite added commercial advantage in this market.

I, therefore, recommend approval of this request and respectfully urge your usual expeditious handling and further recommendations to the Credit Corporation.

/s/ N. G. Day

NGD/df

Enclosure: Copy of contract between Iroquois and Apex

DOCUMENT 18

USSH FINANCIAL ASSISTANCE REQUEST ☐PERMANENT, ☐CONSTRUCTION, ☐SITE DEVELOPMENT, ☐LAND ACQUISITION

Dealer: Fortner Enterprises, Inc.	District Manager: Paul B. Grayson	Date: 5-29-61
Address: 4123 South Third Street	Project Name: Golden Meadows	
City: Louisville, Kentucky	State	Municipality: Valley Station, County: Jefferson, State: Kentucky

A. PERMANENT MORTGAGE FINANCING REQUESTED - (FHA only, unless otherwise indicated)

No. of Cases | Total Amount $ | Term yrs. | Minimum Price Acceptable % of par

DESIRED SOURCE: ☐ USSH Credit Corp. ☐ Other (specify)

Where other sources are requested, Dealer should have had preliminary meeting with correspondent to determine acceptability of program and available terms | Preliminary meeting held: Date

Conditions in local mortgage market (terms, availability, etc.)

B. CONSTRUCTION FINANCING REQUESTED - (See notes 1, 2, and 3 on reverse side)

No. of Lots: 32 | Requested ratio: 85 % of sales price | Approximate total amount $ 435,000

C. SITE DEVELOPMENT FINANCING REQUESTED - (See notes 1, 2, and 3 on reverse side)

No. of lots to be developed | Actual cost of this land $ | Loan Amount Requested $

TYPE OF IMPROVEMENT FOR ABOVE LOTS ONLY	TOTAL COST ☐ Estimate ☐ Firm Bid	AMOUNT IN PLACE: PAID	AMOUNT IN PLACE: NOT PAID	REMAINING WORK
TOTALS				

If additional development work is needed or has been done which is to be considered in the loan amount but is not located entirely on the above land, give type, cost, status, location in relation to above land, etc.:

D. LAND ACQUISITION FINANCING REQUESTED - (See notes 1, 2, and 3 on reverse side)

No. of Lots: 32 | Acres | Actual Cost $ 64,000 | Loan Amount Requested $ 51,000

Describe extent of development completed: Completed

PROJECT INFORMATION | Total land available in this location: Lots: 32 Acres: | NUMBER OF LOTS: Covered by this request: 32 | Owned | Controlled by Agreement: X

Nature and conditions of Agreement or Encumbrances: Mortgage to Louisville Mortgage Service

SUBDIVISION APPROVAL:	All local authorities ☐ Yes ☐ No	Plat recorded for 36 no. of lots	FHA STATUS:	Formal Approval ☐ Yes ☐ No	Preliminary Approval Date	Submitted Date

If not fully approved, explain status:

FHA Commitments on Hand:	FHA Commitments Applied for: 0 Date	Sales Contracts on Hand:	Firm Mortgage Commitments on Hand: Number: Louisville Mtge Svc. Amount:

STATUS OF UTILITIES AND DEVELOPMENT: (type, present location, availability, approval, number of lots serviced, etc.)

Streets: In

Sewerage: In

Water: In

Gas: In | Electricity: In

18

Appraisal and recommendations by Sales Representative:

As per attached request. Approval is recommended.

/s/ P. B. Grayson	/s/ N. G. Day	May 29, 1961
Sales Representative	Residential Sales Manager Manager - Field Sales	Date

NOTES: (for B., C., and D. on reverse side)

1. Include any supplemental data available: cost breakdown, plats, etc. Contract

2. Provide current financial statement(s) of Dealer and affiliates, as appropriate.

3. Are personal guarantees possible, if needed?_____. Is additional collateral available?_____.
   Nature and value _____

Affidavit of Kenneth L. Anderson—July 15, 1966

Arrangements for Development Work and Financing: Completed		
Arrangements for Construction Financing: As per request		
Cost of Average Lot: $2000 ☐ Estimate ☐ Actual	Valuation of Average Lot: $2200 ☒ Estimate ☐ Actual	Are valuations satisfactory to Dealer? Selling ☐ above ☐ below or ☒ at valuations

USS Homes Offered (type, size, foundation, siding, etc.)	Cost [House and Lot] ☐ Estimate ☐ Actual	Valuations [House and Lot] ☐ Estimate ☐ Actual
Typical n Albans brick veneer		
ranch, crawl space	$14,200	$15,600

Major Optional Items		

Sales program to start Started	Shipment to start At once	Estimate completion of current program 6 mos

Condition and trend of market, rate of future sales, competitive situation, etc.

Program going well in Golden Meadows. 40 plus sold to date with 6 sold on subject lots. Very competitive in the market. Aggressive advertising. Sales holding up well.

DOCUMENT 16

June 5, 1961

Mr. David H. Boyd, President
Harry R. Black, Vice President - Sales
Financing Request - Fortner Enterprises, Inc.

The attached request for Fortner Enterprises, Inc. should allow us to achieve additional shipments into the Louisville area during this construction season. Mr. Day's report is complete and provides adequate information for our consideration. The loan request is actually to pay off a mortgage on the improved lots and to acquire additional working capital as needed by the Fortner operation.

As I have informed you in the past, Fortner Enterprises expended large amounts of money in advertising and promoting the project. As a matter of fact, they did one of the outstanding promotional jobs that I have seen in the past year. The market in the Louisville area has responded well to their promotion; and although delays were encountered due to bad weather, the program is now rolling, and we have accomplished in excess of 40 sales to date.

The loan on the improved lots as presented will not only assist him in this capital requirements, but should provide additional immediate funds because of the improved condition of the lots.

It is the recommendation of the Sales Department that the Credit Corporation meet with the principals of Fortner Enterprises, Inc. and negotiate this request.

HRB/df

Attachment

Distribution: D. H. Boyd (3)
W. L. Rollins
S. J. Mack
Andrew Cowart
N. G. Day

DOCUMENT 41

June 13, 1961

Mr. R. C. Dyas
Vice President and General Manager
U. S. Steel Homes Credit Corporation
71 Broadway
New York 6, New York

Dear Dick:

Under date of June 5 Harry Black forwarded to me, with copy for Bill Rollins, a memorandum concerning Fortner Enterprises, Inc.

It was the intention of the Sales Department to consider the contents of that memorandum as a request for special financing. In a sense it is, but I believe it relates largely to the existing financing situation with this dealer, and it may well be that a discussion with Mr. Fortner prior to processing any formalized request in this case would be in order.

Indications thus far are that Mr. Fortner has done a better than satisfactory job of introducing United States Steel Homes' product in his Louisville subdivision. It is apparent that he has spent considerable time, effort and money in promotional activity, but he does not yet have sufficient houses built and closed to provide for a normal turnover of money to meet the costs which he has thus far incurred.

I would appreciate it if you would review the problem with him.

Yours very truly,

/s/ D. H. B.
President

Copy to New Albany Office
CC: H. R. Black

DOCUMENT 69

MEMORANDUM

June 26, 1961

TO: Mr. R. C. Dyas
FROM: Mr. W. L. Rollins
SUBJECT: Fortner Enterprises, Inc.
Louisville, Kentucky

The captioned dealer was franchised on October 31, 1960, and presently has under development with U. S. Steel houses and with financing provided by the Credit Corporation, Golden Meadows Subdivision, Louisville, Kentucky.

Status of Outstanding Loan:

	Authorized	Disbursed	Repaid	Outstanding	Maturity
Land Note #1	$ 88,000	$ 84,566	$ 6,600	$ 77,966	12-31-61
Land Note #2	231,920	133,718	—	133,718	12-31-62
Construction Note #1	373,200	123,537	24,612	98,925	12-31-61
Construction Note #2	1,362,180	—	—	—	12-31-62

The existing loan was made against 187 lots located in Golden Meadows Subdivision, of which number 30 were fully developed and 157 unimproved. Of the Land Notes aggregating $319,920, the amount of $170,500 was disbursed at loan closing to enable Mr. Fortner to buy out the other principal in Iroquois Developers, Inc., which at that time held title to the 187 lots in question and which company, following consummation of the stock purchase, transferred title to the property to our borrower, Fortner Enterprises, Inc.

Borrower reports in excess of 35 sales applicable to lots covered by the loan of which number evidence of 23 approved sales have been furnished to the Credit Corporation. In order to assure liquidation of Land Note #1 by maturity Borrower will have to erect and close approximately 35 houses by December 31, 1961.

Request:

Under date of 5-29-61 the subject dealer submitted another financing request to the Homes Division to cover 32 fully developed lots situated in Golden Meadows Subdivision, which lots are presently owned by Iroquois Developers, Inc. At the time of the negotiation and closing of our present loan the 32 lots in question had been contracted for sale by Iroquois to Apex Homes, Inc., for $68,000.00, payable within one year from the date of the contract, March 17, 1960. However, prior to actual consummation of the sale Mr. Herman Miles, president of Apex Homes, Inc., became general superintendent of Fortner Enterprises, Inc., and consequently permitted the contract to expire.

Mr. Fortner has requested a land loan of $54,000 against the 32 improved lots, together with construction financing. Of the $54,000 land portion of the requested loan, approximately $24,000 would be utilized to retire an existing mortgage on the property, with the balance of $30,000 being requested by Fortner to replenish a portion of the working capital claimed to have been expended in connection with the programming and operation of the U. S. Steel subdivision and which has become frozen due to various delays incurred in placing the program in operation.

The aforementioned request was being processed through the Homes Division under the "special" financing program, however, prior to the formal submission thereof to the Credit Corporation, Mr. Boyd, President of the Homes Division, addressed a letter to you dated June 13, 1961, reading as follows:

"Under date of June 15 Harry Black forwarded to me, with copy for Bill Rollins, a memorandum concerning Fortner Enterprises, Inc.

"It was the intention of the Sales Department to consider the contents of that memorandum as a request for special financing. In a sense it is, but I believe it relates largely to the existing financing situation with

this dealer, and it may well be that a discussion with Mr. Fortner prior to processing any formalized request in this case would be in order.

"Indications thus far are that Mr. Fortner has done a better than satisfactory job of introducing United States Steel Homes' product in his Louisville subdivision. It is apparent that he has spent considerable time, effort and money in promotional activity, but he does not yet have sufficient houses built and closed to provide for a normal turnover of money to meet the costs which he has thus far incurred.

"I would appreciate it if you would review the problem with him."

In compliance therewith I met with Mr. Fortner on June 20, 1961, in an effort to determine if there was a more conservative basis upon which we would provide financing on the lots in question and still be of assistance to him. Mr. Fortner's position was that he needed the financing as requested and felt that a loan similar to that which we originally made was justified.

Should a loan be provided as requested the same would be in the total amount of $462,400.00 as follows:

Total Estimated Valuation — $17,000 per lot — 32 lots		$544,000.00
Total Maximum Loan — 85% of valuation		$462,400.00
Land Note:		
Retire existing mortgage	$24,000	
Working Capital to Borrower	29,688	
Loan Fee	2,312	$ 56,000.00
Construction Note		406,400.00
Total Maximum Loan		$462,400.00

On a per lot basis the loan proceeds would be allocated:

Maximum Estimated Valuation	Maximum Loan (85%)	Allocated to Land Note	Allocated to Construction Note
$17,000	$14,450	$1,750	$12,700

Collateral:

A first lien would be offered as security on 32 fully developed building lots. The lots in question are presently carried on the books of Iroquois Developers, Inc., at approximately $41,500 which apparently represents cost.

Estimated FHA lot valuation is at $2,200 per lot or a total valuation of $70,000.

The land portion of the requested loan amounting to $54,000 would result in a loan approximating 130% of cost and 77% of FHA improved lot valuation.

The proposed release value of $2,200 per lot would result in liquidation of the requested loan on closing of 25 lots, or approximately 78% of the total lots involved.

Construction funds would be disbursed on a stage basis on pre-sold houses.

Financial Condition:

Attached is unaudited balance sheet of Fortner Enterprises, Inc., as of May 31, 1961.

It will be noted that the statement was prepared by showing only as value of work in process those items of costs which had actually been paid and not including in this asset item any costs covering work which had been completed but which was covered by outstanding payables. I subsequently contacted Mr. Fortner's outside accounting firm and have been advised that as of May 31, 1961, payables due suppliers and subcontractors amounted to $27,845.45 (of which $9,457.60 have now been paid) and that $11,641.23 had been billed by United States Steel Homes Division for house packages.

It is evident that until such time as the subject might realize profits from closings in volume any further working capital must either be provided by Mr. Fortner from additional injection or from the proceeds of the requested loan.

Comments:

The improved lots which are the subject of this request are situated in the middle of the initial section of Golden Meadows Subdivision and are surrounded by existing houses which seem to be well maintained. Mr. Fortner reports several sales are available to him on said lots and he is presently in process of erecting 4 of our houses thereon aided by local financing.

In viewing the subdivision, particularly that portion covered by our existing loan, the dealer has practically completed development of the small section of 17 lots (Section 1-F) which was the initial development phase provided for under our loan so as to test the market, and is making rapid progress with the development work in the adjacent section (Section 1-D) comprising 96 lots.

It appears that he has done a very good job with his models and his sales pricing seems to be below that offered by competitors. This should furnish reasonable assurance of capturing a better than fair share of the available market with the presently unknown faster being, of course, the ability to maintain adequate volume to absorb overhead costs and realize a profit.

As previously indicated herein Mr. Fortner stated that he needed the amount requested over and above that required to retire the existing mortgage to replenish working capital which had been depleted to date due to various delays. In this connection, in our discussion I informed Mr. Fortner that expenditures of this nature are normally borne by all builders and in many instances represents about the only risk capital a builder provides.

I further informed him that I felt that a construction loan on the lots in question with provision for disbursement of sufficient funds to retire the existing mortgage could probably be made but that it was difficult to justify a loan such as he was requesting in view of the substantial "front money" exposure we had incurred in our existing loan. Mr. Fortner took the position that he was entitled to the same consideration on this request as he received on the original loan.

In my opinion the expenditures heretobefore made for promotional activities, model furniture, overhead, etc., represents about the only capital injection made in connection with our existing loan and another 100% loan to enable a recapture of a part of such expenditures is not justified.

However, should it be determined to authorize such a loan, the following terms and conditions are suggested:

1. Evidence of Indebtedness:

   a. Land Note in the principal amount of $56,000, maturing in one year, and bearing interest at the rate of 6% per annum, payable monthly, with provision being made for release of lien of the Land Note upon receipt of payment of $2,200 per lot.

   b. Construction Note in the principal amount of $405,400, maturing in one year and bearing interest at the rate of 6% per Annum, payable at house closings.

2. Collateral:

   First lien on 32 fully developed building lots situated in Golden Meadows Subdivision.

3. Disbursements:

   a. Proceeds of Land Note to be disbursed at time of loan closing in payment of Loan Fee, retirement of existing mortgage, and balance of Borrower for working capital purposes.

b. Proceeds of Construction Note to be advanced in stage disbursements as work progresses on pre-sold houses.

4. Other terms and conditions to be substantially in accordance with standard requirements imposed by the Credit Corporation in loans for land acquisition and construction financing.

DOCUMENT 70

BALANCE SHEET
FORTNER ENTERPRISES, INC. (A Kentucky Corporation)
MAY 31, 1961

ASSETS

CURRENTS ASSETS			
Cash in bank		$ 6,271.96	
Account receivable		235.55	
Inventory — Golden Meadows Subdivision:			
(1) Land costs (191 lots)	$240,500.00		
(1) Land development costs and other costs allocable to land	12,742.30		
(1) Work in process — Model Homes and houses under construction	101,853.93		
Furnishing and decorating — Model Homes	11,970.45	367,066.68	
Deferred expenses:			
Interest — payments on Land Notes No. 1, and No. 2, Golden Meadows Subdivision	5,723.30		
Promotion and advertising costs — Golden Meadows Subdivision	3,221.65		
Other deferred expenses	498.14	9,443.09	
TOTAL CURRENT ASSETS			$383,017.28
INVESTMENTS:			
Land and dwellings (Three rental units) Net depreciated cost	$ 29,376.01		
Less: first mortgage notes payable	29,230.46	$ 155.55	
Federal National Mortgage Association Stock		734.00	889.55
TOTAL ASSETS			$383,986.83

NOTE: Work in process shown above includes only costs actually paid toward cost of construction of houses at balance-sheet date. Any costs due subcontractors, supervisors, etc. at balance-sheet date are not reflected herein either as an inventory item or account payable.

The above balance-sheet has been prepared from the books and records of Fortner Enterprises, Inc. and is presented without audit or verification.

LIABILITIES AND CAPITAL

CURRENT LIABILITIES			
First mortgage notes payable:			
(1) U. S. Steel Homes Credit Corporation — Land Note No. 1		$ 73,600.00	
(1) U. S. Steel Homes Credit Corporation — Land Note No. 2		107,175.00	
(1) U. S. Steel Homes Credit Corporation — Construction Note No. 1		106,820.82	$287,595.82
Loans payable:			
A. B. Fortner, Jr.		$ 25,000.00	
Iroquois Developers, Inc.		23,000.00	48,000.00
Accrued expenses			44.70
TOTAL CURRENT LIABILITIES			$335,640.52
CAPITAL			
Preferred stock outstanding		$ 6,000.00	
Common stock outstanding		1,000.00	
TOTAL		$ 7,000.00	
Appreciation surplus	$ 62,000.00		
Deficiency in earned surplus	20,733.69	41,266.37	48,266.31
TOTAL LIABILITIES AND CAPITAL			$383,986.83

(1) First mortgage notes are secured by land and improvements in accordance with Loan Agreement and Mortgage Deed dated October 28, 1960, between Fortner Enterprises, Inc. and U. S. Steel Homes Credit Corporation.

NOTE: Appreciation surplus shown above resulted from revaluation of 186 subdivision lots acquired by the Company.

DOCUMENT 68

LETTERHEAD OF U.S. STEEL CREDIT CORPORATION

June 26, 1961

Mr. R. C. Dyas, Vice President
71 Broadway
New York 6, New York

Dear Mr. Dyas:

Re: Fortner Enterprises, Inc.
Proposed Additional Loan

Reference is made to Mr. Boyd's letter addressed to you under date of June 13, 1961, relative to the request submitted by the subject dealership for financing on approximately thirty-two additional lots in the Golden Meadows Subdivision, in which letter it was requested that the Credit Corporation review with Mr. Fortner his problem prior to any formalized processing of the case.

On June 20, 1961, accompanied by Mr. Grayson of the Homes Division and Mr. Leonard of the Credit Corporation, I met with Mr. Fortner on this matter and attached is a memorandum regarding his request.

There can be no question that the dealer has incurred substantial expenditures of which he has been unable to recover any portion to date. After discussing the matter with Mr. Fortner I can only conclude that a loan on any basis other than that which he has asked for would be unacceptable to him.

I am forwarding copies of this letter and enclosure to Mr. Boyd and Mr. Black so that they will be in a position to discuss the case with you.

Very truly yours,

/s/ W. L. Rollins
Assistant General Manager

DOCUMENT 40

June 29, 1961

Mr. W. H. Lang, President and Treasurer
U. S. Steel Homes Credit Corporation
71 Broadway
New York 6, New York

Fortner Enterprises, Inc.

Dear Mr. Lang:

Under date of June 5, I received in this office the attached recommendation from Harry R. Black, Vice President — Sales, covering an additional financing request under the special program for the subject dealer.

Since I recognized, after a review of the recommendation, that the request was in effect an extension of, and directly related to, the existing program which this dealer is now following, I suggested to R. C. Dyas that a preliminary discussion be held with the dealer pending the processing of any formal action. This discussion was held on June 20 by W. L. Rollins, and a copy of Mr. Rollins' report was sent to this office.

Subsequent to its receipt, I have discussed the subject more fully with Harry Black, and despite the liberal nature of the request and proposal, it is his judgment that this additional financing provides an important commercial benefit to us in the Louisville area. He has indicated to me that the dealer is earning a profit on the sale of the product, and has further stated that the dealer has in excess of thirty-five sales ahead. Assuming that these can be closed this year, they should be sufficient to permit the dealer to liquidate his 1961 indebtedness on schedule.

Control will continue to be exercised over the dealer's operations in order to prevent the possibility of speculative building.

Our Treasury Department indicates that dealings thus far have been satisfactory.

Consequently, it is recommended that consideration be given to further negotiations with Mr. Fortner so that a continuing program may be provided.

Yours very ruly,
President

DOCUMENT 4

May 3, 1962

H. R. Black, Vice President — Sales
Stanley J. Mack, Manager — Dealer Sales
A. B. Fortner Meeting — Complaints

As you know, I along with Paul Grayson, met with Mr. A. B. Fortner and his organization last Thursday, April 26, for the purpose of determining the reasons for his dissatisfaction and what we could do to improve relations with this dealer. We had information that Fortner was very much dissatisfied, to the extent that he was considering the possibility of discontinuing his program with United States Steel Homes.

In my discussions with Mr. Fortner, he left no doubt that there was considerable dissatisfaction, and that the possibility of discontinuing his program was not remote. His position was that, through a long list of product problems and deficiencies, his costs had increased considerably, and that his sales group had lost confidence in the product they were selling. He felt that he had priced his product extremely competitively, based on the assumption that he would get a quality product, easy to erect and, therefore, with few problems. He stated that the results were the opposite — it had been one series of "minor" problems from the start, each of which, while only a few dollars ir itself, continued to pile costs on top of costs to the point where his profit margin was almost nil. Along with this, he stated he had difficulties getting clearance on buyers. The combination of product problems, loss of confidence by his sales group and difficulties in getting buyer ap-

proval made it impossible for him to carry on the volume program he had originally anticipated. Volume is his big need to maintain the prices he has established. He stated that, while we have been prompt, in most cases, in shipping replacement materials or correcting mistakes, still and all this was not the answer.

The following are a list of current complaints which he gave to me:

1. Screens: Some screens are too thick for the channel in the window and, as a result, they bend. He must remove screens and search for a screen of proper thickness and then re-install the screen. Result is extra time and cost.

2. Storm Doors: The stop strip for the storm door is being split because the screws that fasten the strip to the jamb are too short. Also, on the front door the striker plate is frequently set back too far, resulting in the latch chewing up the trim.

He further advised that the chains which we place on the wood storm doors do not qualify for the F.H.A. requirement of a chain check on such doors. Apparently, the F.H.A. inspector interprets the "check" to be an automatic closing device rather than a chain.

3. Windows: He advised that the rails do not line up on many windows and, as a result, it is impossible to lock them. Along with this complaint, there is wind and water leakage.

4. Cabinets: He mentioned several instances of where cabinet doors were slightly out of alignment, screws were missing from door handles and, in a few instances, shades did not match. While not big items, these were aggravating. More aggravating was the fact that F.H.A. requires polishable metal over ½" asbestos board for a cabinet when it is within 28" of a range top. This was called to their attention during their F.H.A. inspection on two recent models. Upon checking with the plant, they were advised that we did not furnish this fire protective board and, apparently, could not tell where these might be obtained.

More aggravating, we did not show any interest in obtaining these for them. They did find the asbestos board at Kitchen Mart, but felt that we should have made the effort to furnish the item.

5. Gable Ends: On a recent F.H.A. inspection on two models, both were turned down because of waviness of gable ends along with other infractions. While, again, we have redesigned the gable and to eliminate this problem, they are fearful of repercussions on other existing homes. They state, too, that the use of batten strips would increase their costs.

6. Exterior Panels: They complained that, in several instances, exterior panels did not align properly which, in turn, resulted in a more difficult tape and spackle job. You are already aware of the problems we have had concerning dry-wall with this dealership. We have taken the position that their dry-wall installer is at fault which, of course, did not improve their dispositions.

7. Soffits: They stated that the method we use of ventilating in the soffit meets heavy buyer objection. The ventilating screen is very obvious in this position and looks cheap to the buyer. You can see the truss, roof sheathing and it does not give the appearance of a quality house. Their salesmen have complained a great deal about this as an objectionable item on our homes. They would like gable louvers.

8. Nail Pops: They advised that they had had instances of nail pops and, in particular, those occurring in the Cummings house. F.H.A. has demanded that they make certain corrections on this home and, at the present time, they have a time extension for replying to F.H.A.

9. Closet Doors: You are well aware of the problems we have had concerning closet door installation at Fortner's.

Fortner was quite frank in stating that some of the problems are of their own making — that they are not entirely blameless. Nevertheless, many of the items which

he has listed are our fault and they all add up to the fact that here is a most disgruntled dealer and we are in serious danger of losing him. We can and have taken the position on several occasions that his workmanship is inferior, which may be true, but this will not solve our problem.

I advised Mr. Fortner that we have corrected many of the complaints that he mentioned — for example, the new post-formed top for curing the problem of counter tops. We have re-designed the gable ends. We are re-designing closet doors. We are investigating the possibility of easing the edges of the gypsum to avoid the tape and spackle problem. We are considering going to a 6'8" closet door and even offered him the option of deleting closet doors, to which he replied that he wanted a complete package. I asked Mr. Fortner to prepare an estimate on the additional expenses he incurred as a result of our deficiencies and let us take a look at these. I did not indicate that we would accept any amount or settle for any amount. Rather, I asked for specifics and specific amounts so that we could make an honest appraisal. He advised me that he would do this but it would take a little while.

The most important item in our conversation was the fact that he has become convinced that his salvation lies in a $10,000 house and he is going to have this whether it is with us or with someone else. He indicated a willingness to "let bygones be bygones" if we could furnish such a product, even if it involved special pricing in the home package from us. I told Mr. Fortner that we must follow a one-price policy and, therefore, there can be no price concessions, even though this might be a method of "making up for past mistakes".

As you know, Paul has been working on this price house with Fortner's organization and, at that time, felt that the lowest attainable price was 10;500. I expressed doubt that we can ever get another $500 out of the home package alone. Since this time, Paul has learned that the house which Fortner's competition (Swindler) had been offering at

$10,000 was low-cost 221 and, with this possibility, we may be able to get closer to the $10,000 figure.

In summing up, there is no question that this dealership is quite dissatisfied and we face the possibility of losing him. We can take the position that much of his troubles he brought on himself by his construction methods, yet I cannot help but feel that we are at least partially responsible. We should attempt to make an equitable settlement on extra costs incurred as a result of our mistakes. I will not know the figure we are talking about until he presents his specific figures. We must eliminate the causes for complaint, since in their present frame of mind every little item looms large now. Paul Grayson should know within the next week whether or not we can develop a home plan or package which will permit Fortner to build in the price range he indicated.

I intend to follow up with Mr. Fortner within the next week concerning these complaints, and have promised him to do whatever I can to correct the problems which I have outlined. I further stated that if we cannot improve or correct these items, I would be honest and frank about it and advise him of this, without any false promises.

/s/ Stanley J. Mack
Manager — Dealer Sales

DOCUMENT 7

LETTERHEAD OF UNITED STATES STEEL HOMES

May 3, 1962

TO: H. R. Black, Vice President — Sales
FROM: Stanley J. Mack, Manager — Dealer Sales
SUBJECT: A. B. Fortner Meeting — Complaints

As you know, I, along with Paul Grayson, met with Mr. A. B. Fortner and his organization last Thursday, April

26, for the purpose of determining the reasons for his dissatisfaction and what we could do to improve relations with this dealer. We had information that Fortner was very much dissatisfied, to the extent that he was considering the possibility of discontinuing his program with United States Steel Homes.

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The following are a list of current complaints which he gave to me:

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jamb are too short. Also, on the front door the striker plate is frequently set back too far, resulting in the latch chewing up the trim.

He further advised that the chains which we place on the wood storm doors do not qualify for the F.H.A. requirement of a chain check on such doors. Apparently, the F.H.A. inspector interprets the "check" to be an automatic closing device rather than a chain.

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asked Mr. Fortner to prepare an estimate on the additional expense he incurred as a result of our deficiencies and let us take a look at these. I did not indicate that we would accept any account or settle for any amount. Rather, I asked for specifics and specific amounts so that we could make an honest appraisal. He advised me that he would do this but it would take a little while.

The most important item in our conversation was the fact that he has become convinced that his salvation lies in a $10,000 house and he is going to have this whether it it with us or with someone else. He indicated a willingness to "let bygones be bygones" if we could furnish such a product, even if it involved special pricing in the home package from us. I told Mr. Fortner that we must follow a one-price policy and, therefore, there can be no price concessions, even though this might be a method of "making up for past mistakes".

As you know, Paul has been working on this price house with Fortner's organization and, at that time, felt that the lowest attainable price was $10,500. I expressed doubt that we can ever get another $500 out of the home package alone. Since this time, Paul has learned that the house which Fortner's competition (Swindler) had been offering at $10,000 was low-cost 221 and, with this possibility, we may be able to get closer to the $10,000 figure.

In summing up, there is no question that this dealership is quite dissatisfied and we face the possibility of losing him. We can take the position that much of his troubles he brought on himself by his construction methods, yet I cannot help but feel that we are at least partially responsible. We should attempt to make an equitable settlement on extra cost incurred as a result of our mistakes. I will not know the figure we are talking about until he presents his specific figures. We must eliminate the causes for complaint, since in their present frame of mind every little item looms large now. Paul Grayson should know within

the next week whether or not we can develop a home plan or package which will permit Fortner to build in the price range he indicated.

I intend to follow up with Mr Fortner within the next week concerning these complaints, and have promised him to do whatever I can to correct the problems which I have outlined. I further stated that if we cannot improve or correct these items, I would be honest and frank about it and advise him of this, without any false promises.

/s/ Stanley J. Mack
Manager — Dealer Sales

DOCUMENT 201

LETTERHEAD OF UNITED STATES STEEL HOMES

May 7, 1962

TO: H. R. Black, Vice President — Sales
FROM: Stanley J. Mack, Manager — Dealer Sales
SUBJECT: Fortner Enterprises, Inc. — Complaints

As a follow-up to my previous memorandum to you concerning the Fortner problem, on Friday I had a meeting with Derrel Longest and with the representative for Malta Windows. This meeting was requested by Derrel and was prompted by the copy of my memorandum which you forwarded to Mr. Longest. Mr. Longest had requested that we call on Fortner with each of the vendor representatives whose products apparently were in question. At Mr. Longest's request, I called Mr. Fortner on Friday to set up a visit. We were unable to do this for Friday, May 4 but have set up a visit for May 11. Paul Grayson, Derrel Longest, Vern Gessner of Malta Windows and myself will visit the project, and I have asked Mr. Fortner to select the homes with the window problems for our inspection.

I intend to schedule further visits with each of the vendor representatives and Purchasing.

I mentioned to Mr. Fortner that we intended to vigorously follow up on these complaints and intended to eliminate these problems if at all possible. I also reminded him that, as soon as he was able to gather the specific costs and information concerning his complaints, we would like to take a look at this. He told me that he had so instructed Miles Prescott. During our conversation, he also mentioned that Paul was preparing plans on the low-cost house and he had not yet received these plans.

I checked Paul Grayson concerning these plans this morning and Paul advises that he was unaware that Fortner wanted complete submission drawings for this plan, since Fortner had not, as yet, received F.H.A. approval for a 221 house in Golden Meadows. In any event, Paul planned to prepare these submission drawings and see Fortner tomorrow, Tuesday, May 8.

I will keep your informed of progress with this dealership and especially the results of our meeting this coming Friday, May 11.

/s/ Stanley J. Mack
Manager — Dealer Sales

DOCUMENT 242

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

June 6, 1962

Three home orders were received from Fortner Enterprises during the month of May and the three were shipped in the same month. The present backlog of home orders is zero.

Affidavit of Kenneth L. Anderson—July 15, 1966

The following table reflects the monthly order activity:

1960	Orders Received	Orders Shipped
November	4	3
December	1	1
1961		
January	6	1
February	—	3
March	—	1
April	1	3
May	13	5
June	6	8
July	4	7
August	2	5
September	7	4
October	13	8
November	—	8
December	2	2
1962		
January	4	1
February	2	3
March	1	3
April	1	1
May	3	3
	—	—
	70	70

Eight of these houses are being used as models and three are known to be spec houses. The actual number of spec houses now on hand is unknown because of some lost sales. Four closings were completed during May for a grand total of 50.

Although sales have slowed down considerably, the accounts with both the Credit Corporation and the Homes Division are in a current status.

DOCUMENT 127

MEMORANDUM

June 19, 1962

TO: Mr. D. H. Boyd
FROM: R. C. Dyas
SUBJECT: Fortner Enterprises, Inc.
Louisville, Kentucky

1. Ernst & Ernst today reviewed with us their preliminary report on the subject company. The formal report as of May 31 will now be prepared and furnished to us in a day or so. Salient features of the report are as follows:

a. The Golden Meadows project has made a net profit of some $6,000 since inception. Gross profit on 51 houses sold and closed amounts to slightly more than $1,000 per house, or $51,183.28. Of this amount, about $22,500 is offset by interest on land loans. Other overhead items appear reasonable, excepting an item of $9,000 for "unidentified costs and expenses," which would include all expense of service to home buyers;

b. The corporation is insolvent by some $10,000, due to losses incurred prior to undertaking Golden Meadows. At the time our first loan was negotiated, this condition was disguised by a $62,000 over-valuation of assets. The insolvency may be cured by capitalization of some or all of the corporation's indebtedness to Iroquois Developers, Inc., $24,000, and to A. B. Fortner, Jr., $11,200;

c. Circularization of subcontractors has developed no claims not disclosed by the books, or aged payables. About half of the subcontractors have responded and more responses are expected during the week. No investigation was made of alleged claims by home buyers.

2. In memo to you dated June 11* (copies of which were furnished to us) Mr. Black advised that he had been in-

formed by Mr. Reutlinger that Fortner's attorneys had asked for a copy of the audit report, when completed, and that Mr. Reutlinger "saw no reason why this should not be made available." We see no reason why it should. The cost of this audit will be $1,000 or more and up to date we feel we owe no favors to the dealer. Of course we will furnish copies to you as soon as the report is received, for your own use and information.

3. You will recall that after the meeting with the dealer and its attorneys on June 5 I advised Mr. Reutlinger that "the Credit Corporation would withhold action to enforce payment of its loans for a maximum period of two weeks, provided satisfactory progress is made in the negotiations with the Homes Division." (See memo, Dyas to Lang, 6/8).* The two weeks period has expired and apparently no reasonable progress has been made in negotiations. We believe we should now proceed to make demand for payment and refer our files to the Legal Division to institute legal action.

*Attached

DOCUMENT 128

ERNST & ERNST
Commonwealth Building
Louisville

June 19, 1962

Mr. William L. Rollins,
Assistant General Manager,
U. S. Steel Homes Credit Corporation,
Mutual Trust and Deposit Building,
New Albany, Indiana.

Dear Mr. Rollins:

We are enclosing six copies of preliminary financial statements (without audit) of Fortner Enterprises, Inc. for the period of one year and eleven months from July 1, 1960 through May 31, 1962.

Affidavit of Kenneth L. Anderson—July 15, 1966

The following comments relate to accompanying financial statements or to the scope of our examination.

1. In connection with our circulation of vendors and sub-contractors of record, we have received replies to approximately 50% of the requests sent. For the replies received, there were no unusual items reported by the vendors or sub-contractors nor was there any indication that any of the sub-contractors were asserting or intended to assert claims against the Company.

2. The bookkeeper for Cook Lumber Company indicated informally to us that there has been correspondence relative to claims. However, Mr. Herman Miles declined to give any further information in regard to any claims and stated that he knew of no claims against the Corporation.

3. The amount shown on the balance sheet as construction accounts payable represents all unpaid bills as of May 31, 1962, which we were able to determine by reference to records of the Corporation and by confirmation requests to venders and sub-contractors. It is probable that additional amounts will be disclosed as additional replies are received to our confirmation requests. Generally the unpaid bills represents current charges on the houses under construction.

4. The note payable to Iroquois Development Corporation represents cash advances in 1960 and 1961 aggregating $33,981.65 less a repayment in February, 1961 of $10,000.

5. The advance payable to Mr. A. B. Fortner, Jr. represents principally cash advances from A. B. Fortner, Jr. in late 1960 and early 1961 aggregating $25,000, less cash repayments in late 1961 and early 1962.

6. The undeveloped land (containing an area for 45 lots) is carried at a cost of $750.00 per lot plus a prorata part of financing costs amounting to $55.01 per lot.

7. The developed lots (104 lots) are carried at costs of approximately $1,600.00 to $1,800.00 per lot.

8. The houses under construction represents 12 houses either complete or under construction on a contract basis and 11 houses (including models and office) either complete or under construction on a speculation basis.

9. In examination of support for houses under construction, we noted that the invoices from vendors and sub-contractors generally did not contain any approval indicating the receipt of material or approval of work done nor were there generally any receiving reports attached to the invoices. In many cases the invoices did indicate the lot number to which material or labor was supplied and in other cases this was indicated on the invoice by employees of the Corporation. We found no indication during our examination, however, that the invoices examined were not proper charges for materials or services.

If you have any further questions in regard to the financial statements or our examination, please advise.

Yours truly,

/s/ (illegible)
Assistant Manager.

DOCUMENT 128

PRELIMINARY BALANCE SHEET
(WITHOUT AUDIT)
FORTNER ENTERPRISES, INC.
May 31, 1962

ASSETS

Cash:		
In bank		$ 4,364.53
Deposits in transit		6,171.47
		$ 10,536.00
Escrow deposit		2,950.00
Accounts receivable and insurance claims		2,843.16
Real estate and construction in progress (mortgaged) — at cost:		
Undeveloped land — 45 lots	$ 36,225.45	
Developed lots — 104 lots	182,527.77	
Houses under construction and land cost; (including office and model homes)	194,521.52	
Furniture and furnishings in model homes (no depreciation provided)	13,221.45	426,496.19
Equipment and furniture — less estimated depreciation		1,768.56
Investment — stock in FNMA		2,014.50
Rental property — mortgaged	$ 41,733.56	
Less accumulated depreciation (estimated)	3,471.00	38,262.56
		$484,870.97

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 129

LIABILITIES

Mortgage notes payable to U. S. Steel Homes Credit Corporation:		
Land loans		$244,357.60
Construction loans		126,934.60
Other		2,950.00
		$374,242.20
Mortgage notes payable — rental property		38,541.42
Construction accounts payable		39,111.97
Note payable — Iroquois Developers, Inc.		23,981.65
Accrued interest on construction advances		3,982.75
Payroll taxes and other liabilities		204.44
Advances from A. B. Fortner, Jr.		11,200.00
TOTAL LIABILITIES		$491,264.43
Deficiency in assets:		
Preferred Stock	$ 6,000.00	
Common Stock	1,000.00	
	$ 7,000.00	
Earned-surplus deficit (deduction*):		
Balance at July 1, 1960	$16,174.56*	
Net profit for period from July 1, 1960 through May 31, 1962	2,781.10	
	13,393.46*	6,393.46*
		$484,870.97

*Denotes red figure.

See note to financial statements.

DOCUMENT 130

PRELIMINARY STATEMENT OF OPERATIONS (WITHOUT AUDIT)
FORTNER ENTERPRISES, INC.

Period of one year and eleven months from July 1, 1960 through May 31, 1962

GOLDEN MEADOWS PROJECT

	Year Ended June 30, 1961	Eleven Months Ended May 31, 1962	Total
Sales of houses (51 houses)	$38,825.00	$624,452.59	$663,277.59
Cost of houses sold:			
Land and construction costs, including sales commissions, closing costs, loan discount, and interest on construction advances	$36,447.42	$581,202.96	$617,650.38
Less utility refunds received	—0—	5,556.07	5,556.07
NET CONSTRUCTION COSTS	$36,447.42	$575,646.89	$612,094.31
	$ 2,377.58	$ 48,805.70	$ 51,183.28
Expenses:			
Interest expense — Note	$ 7,574.10	$ 14,896.69	$ 22,470.79
Insurance	1,619.17	61.83	1,681.00
Professional services	235.00	1,548.72	1,783.72
Salaries	1,590.00	3,475.00	5,065.00
Advertising	831.00	616.72*	214.28
Heat, light, and power	146.48	1,772.09	1,918.57
Telephone	157.75	388.39	546.14
Office expense	110.06	22.01	132.07
Taxes and licenses	68.64	839.68	908.32
Depreciation — estimated	71.55	200.00	271.55
Dues and subscriptions	10.00	190.00	200.00
Commissions (bonuses)	-0-	800.00	800.00
Unidentified costs and expenses	2,072.26	7,032.45	9,104.71
	$14,486.01	$ 30,610.14	$ 45,096.15
PROFIT OR LOSS* — GOLDEN MEADOWS PROJECT	$12,108.43*	$ 18,195.56	$ 6,087.13

OTHER THAN GOLDEN MEADOWS PROJECT			
Rental income	$ 2,997.00	$ 3,866.00	$ 6,863.00
Dividends received	20.46	28.89	49.35
	$ 3,017.46	$ 3,894.89	$ 6,912.35
Expenses:			
Interest	$ 1,401.10	$ 1,350.00	$ 2,751.10
Insurance	207.50	209.61	417.11
Taxes	308.00	301.18	609.18
Repairs and maintenance	92.14	232.67	324.81
Commissions	177.60	193.44	371.04
Depreciation	1,346.74	1,300.00	2,646.74
Amortization of organization expense	23.40	-0-	23.40
Rent expense and payment in settlement of lease	3,075.00	-0-	3,075.00
	$ 6,631.48	$ 3,586.00	$ 10,218.38
PROFIT OR LOSS* — OTHER THAN GOLDEN MEADOWS PROJECT	$ 3,614.02*	$ 307.99	$ 3,306.03*
NET PROFIT OR LOSS*	$15,722.45*	$ 18,503.55	$ 2,781.10

*Denotes red figure.
See note to financial statements.

DOCUMENT 131

NOTE TO FINANCIAL STATEMENTS (WITHOUT AUDIT)
FORTNER ENTERPRISES, INC.

May 31, 1962

Interest expense shown in the statement of operations (amounting to $22,470.79) represents principally interest on the land loans from U. S. Steel Homes Credit Corporation. On the books, part of this interest has been shown as a deferred charge to be allocated to the cost of the various lots and undeveloped land, but for the purpose of the accompanying statements all such interest and other carrying charges have been shown as an expense.

Interest on construction advances on houses under construction at May 31, 1962 amounted to $3,982.75, and this amount is included in the cost of houses under construction.

DOCUMENT 126

July 10, 1962

TO: MR. W. L. ROLLINS
FROM: MR. D. H. BOYD
SUBJECT: FORTNER ENTERPRISES

Dick Dyas called me today and after some discussion, he informed me that the following steps would be taken with respect to Fortner's indebtedness:

1. The matter would be turned over to John Bird for handling.

2. A letter of demand for payment would be forwarded to Fortner, accompanied by a copy of the Ernst & Ernst audit recently completed.

At Dick's request, I informed Al Reutlinger of this decision and told him that he would at least be advised when the letter was forwarded to Fortner so that he would be completely up-to-date. Would you please be sure that he is so advised?

CC: R. C. Dyas

DOCUMENT 226

October 26, 1960

INTER-OFFICE MEMORANDUM

TO: H. R. Black, Gen'l Mgr. - Sales
FROM: Paul Grayson, Sales Rep.
SUBJECT: Fortner Enterprises

Enclosed are signed franchise forms for the subject.

This has been a long pull as you are well aware, it was back in Dec., of 1959 that Neil and I first contacted these people.

I believe that this will develop into the best dealer that we have had in the Louisville area.

Thanks very much for your help.

Paul

DOCUMENT 237

UNDERWRITING AGREEMENT

THIS AGREEMENT, made as of this 30th day of March, 1962, by and between U. S. STEEL HOMES CREDIT CORPORATION, a corporation organized and existing under and by virtue of the laws of the State of Delaware (hereinafter called "Credit Corporation"), and UNITED STATES STEEL HOMES DIVISION, UNITED STATES STEEL CORPORATION, a corporation organized and existing under and by virtue of the laws of the State of New Jersey (hereinafter called "Homes Division");

WITNESSETH:

WHEREAS, Homes Division from time to time has requested Credit Corporation to make loans to or for the benefit of certain of its franchised dealers for the purpose of assisting such dealers in the financing of residential projects utilizing products of Homes Division, and Credit Corporation has made such loans; and

WHEREAS, Such loans have been requested and made pursuant to certain authorities granted by the Finance Committee of the United States Steel Corporation and the Board of Directors of Credit Corporation, with the intent that any and all loss which might be incurred by Credit Corporation in the liquidation of such loans should be underwritten by Homes Division; and

WHEREAS, All such loans as have been previously requested and underwritten by Homes Division which have

not been fully liquidated at the date hereof are listed in the schedule attached hereto styled and identified as "Loans Guaranteed by United States Steel Homes Division as of March 30, 1962" (hereinafter called "Guaranteed Loans"); and

WHEREAS, It is contemplated that additional loans in the future shall be requested by Homes Division and made by Credit Corporation with the intent that any and all loss which might be incurred by Credit Corporation in the liquidation of such loans shall be underwritten by Homes Division; and

WHEREAS, The parties hereto desire to define more fully their mutual intent with respect to the underwriting of all such loans;

NOW, THEREFORE,

In consideration of the mutual promises hereinafter set forth and other valuable considerations, the parties hereto agree as follows:

1. Homes Division hereby:

a. Agrees to pay unto Credit Corporation any and all loss which may be incurred by Credit Corporation on account of any balance of principal and interest of any of said Guaranteed Loans remaining unpaid upon exhaustion by Credit Corporation of all effort for the collection thereof as may be practicable, together with all direct cost and expense of collection; such payment to be made upon demand by Credit Corporation; and

b. Consents that the maturity dates of said Guaranteed Loans may be extended, or the terms of any of said loans may be otherwise modified, by Credit Corporation without affecting the obligation of Homes Division under this Underwriting Agreement, and waives all diligence, presentment, notice, and defenses based thereon.

2. The parties hereto agree:

a. That any additional loan to be underwritten in the future by Homes Division shall be made by Credit Corporation only after receipt of an instrument in writing, duly executed by Homes Division, which shall expressly provide that Homes Division:

(1) Agrees to pay unto Credit Corporation any and all loss which may be incurred by Credit Corporation on account of any balance of principal and interest of such loan remaining unpaid upon exhaustion by Credit Corporation of all such effort for the collection thereof as may be practicable, together with all direct cost and expense of collection; such payment to be made upon demand by Credit Corporation; and

(2) Consents that the maturity date of such loan may be extended, or the terms of such loan may be otherwise modified, by Credit Corporation without affecting the obligation of Homes Division under such instrument, and waives all diligence, presentment, notice and defenses based thereon.

b. That any such additional loan shall be made by Credit Corporation and underwritten by Homes Division only after (1) Homes Division has requested Credit Corporation in writing to make such loan as a financial risk in the regular course of its business, (2) Credit Corporation has determined that such loan may not be made as a financial risk in the regular course of its business, (3) Credit Corporation has advised Homes Division of such determination in writing, setting forth the reasons for such determination and all such data and information as may be pertinent to a determination that such loan might be made as a commercial risk, including proposed terms and conditions of such loan as a commercial risk, and (4) Homes Division has directed Credit Corporation in writing to proceed to make such loan as a commercial risk in reliance upon the underwriting of such loan by Homes Division as above set

forth; provided, however, that the procedure outlined in this subparagraph shall not apply to the underwriting by Homes Division of disbursements made on loans to finance the construction of model homes pursuant to Model Home Program approved by the parties hereto on June 8, 1961, as such program has been or may be amended or modified.

IN WITNESS WHEREOF, Credit Corporation and Homes Division have caused this Underwriting Agreement to be executed in duplicate originals as of this 30th day of March, 1962.

U. S. STEEL HOMES CREDIT CORPORATION

By: /s/ W. H. Long
President

Attest: /s/ B. L. Rawlins
Secretary

UNITED STATES STEEL HOMES DIVISION
UNITED STATES STEEL CORPORATION

By: /s/ D. H. Boyd
President

Attest: /s/ W. L. Licher
Asst. Secretary

Attachment

LOANS GUARANTEED BY UNITED STATES STEEL HOMES DIVISION AS OF MARCH 30, 1962

This schedule entitled "Loans Guaranteed by United States Steel Homes Division as of March 30, 1962," is the schedule referred to in that certain Underwriting Agreement dated March 30, 1962, by and between U. S. Steel Homes Credit Corporation and United States Steel Homes

Division, United States Steel Corporation, and is an attachment to such Underwriting Agreement.

Date of Loan	Name of Borrower	Loan No.	Original Amount	Maturity Date
1-14-60	United Construction Co.	1519	$ 160,000	7- 1-62
3-22-60	Lakewood Manor, Inc.	1529	154,485	4- 1-62
5- 3-60	Hillsdale Development Corp.	1533	161,300	6- 1-62
9- 2-60	Stoll-Myers Builders, Inc.	1557	260,000	9- 1-62
9-28-60	Dorsey Development Corp.	1563	390,355	4- 1-62
10-14-60	W. Anthony Torsell, Inc.	1562	57,820	5- 1-62
10-28-60	Fortner Enterprises, Inc.	1568	88,000	6- 1-62
10-28-60	Fortner Enterprises, Inc.	1568	231,920	12-31-62
1-17-61	Midland Development Co., Inc.	1574	126,675	8- 1-62
4- 7-61	North Hills, Inc.	1579	225,000	5- 1-62
5-11-61	Clifford C. Loss, Inc.	1584	165,200	12- 1-62
7-25-61	Harrison Homes, Inc.	1600	116,000	8- 1-62
7-27-61	Heritage Building Corp.	1599	94,920	8- 1-62
8- 2-61	Fortner Enterprises, Inc.	1602	59,000	12-31-62
8-31-61	W. Anthony Torsell, Inc.	1603	31,200	12-31-62
10- 5-61	Regency Homes, Inc.	1610	84,000	4- 1-63
10-16-61	Park Building Corp.	1613	50,000	12-31-62
12-26-61	Midland Development Co., Inc.	1617	48,645	7- 1-63
2-28-62	Allardt Homes, Inc.	1626	89,040	3- 1-63
3-21-62	Thunderbird Homes, Inc.	1627	156,600	4- 1-63
10-19-59	North Cincinnati Builders, Inc.	1501	79,100	12-31-62
12- 8-59	Fourteenth Ohio Builders, Inc.	1512	22,500	10-31-62
1- 6-60	Ninth Meadowdale, Inc.	1517	42,900	6- 1-62
1-28-60	Valley Hi, Inc.	1521	21,200	6- 1-62
3- 2-60	Third Hoosier Villas, Inc.	1525	24,500	8- 1-62
4-19-60	Valley Hi, Inc.	1535	67,500	12-31-62
5-16-60	Ninth Meadowdale, Inc.	1538	146,250	12-31-62
6- 7-60	Fourth Hoosier Villas, Inc.	1544	75,000	12- 1-62
6-30-60	Highland Terrace, Inc.	1547	174,500	6- 1-62
7-25-60	Hoosier Villas, Inc.	1540	190,800	12-31-62
8- 5-60	Valley Hi, Inc.	1552	94,050	10- 1-62
9-29-60	Willow Dell Builders, Inc.	1559	173,950	4- 1-62
10-27-60	Valley Hi, Inc.	1560	253,800	4- 1-62
1-17-61	Third Hoosier Villas, Inc.	1577	51,300	8- 1-62
6-16-61	Valley Hi, Inc.	1586	78,100	12-31-62
6-21-61	Valleydale Builders, Inc.	1585	404,390	12-31-62
6-29-61	Fifth Cincinnati Builders, Inc.	1588	81,900	12-31-62
6-29-61	North Cincinnati Builders, Inc.	1589	155,100	12-31-62
6-29-61	North Cincinnati Builders, Inc.	1590	107,550	12-31-62
6-29-61	North Cincinnati Builders, Inc.	1591	244,900	12-31-62
7-11-61	Ninth Meadowdale, Inc.	1598	24,920	12-31-62
10- 6-61	Twelfth Ohio Builders, Inc.	1609	103,680	4- 1-63
12-31-61	Willow Dell Builders, Inc.	1615	124,550	7- 1-63

Date of Loan	Name of Borrower	Loan No.	Original Amount	Maturity Date
1- 3-62	North Cincinnati Builders, Inc.	1618	292,400	12-31-63
1-16-62	Fourth Hoosier Villas, Inc.	1619	126,850	7- 1-63
9-30-59	Twelfth Ohio Builders, Inc.	1496	22,000	9-30-62
9-30-59	Valley Hi, Inc.	1497	12,500	9-30-62
12-16-59	Valleydale Builders, Inc.	1513	58,264	12-31-62
12-22-59	Fifteenth Ohio Builders, Inc.	1515	24,900	12-31-62
1-11-60	Willow Dell Builders, Inc.	1516	325,000	12-31-62
1-28-60	Hoosier Villas, Inc.	1520	105,000	12-31-62
10-27-60	Valleydale Builders, Inc.	1566	60,900	12-31-62
10-27-60	Twelfth Ohio Builders, Inc.	1567	32,700	12-31-62
12- 9-60	Caddy Vista Homes, Inc.	1576	160,000	12- 1-62
4-26-61	Broyhill Land Corporation	1582	1,000,000	6-30-66
4-26-61	M. T. Broyhill & Sons Corp.	1583	500,000	6-30-66
7-11-61	Midland Development Co., Inc.	1595	76,450	9- 1-62
10- 4-61	Twelfth Ohio Builders, Inc.	1607	32,565	12-31-62
10-25-61	Valleydale Builders, Inc.	1608	60,900	12-31-62
11-17-61	Steel Homes, Inc.	1612	42,500	12-31-62

IN WITNESS WHEREOF, Credit Corporation and Homes Division have caused this Underwriting Agreement to be executed in duplicate this 30th day of March, 1962.

U. S. STEEL HOMES CREDIT CORPORATION

/s/ W. H. Lang
President

Attest: /s/ B. L. Rawlins
Secretary

UNITED STATES STEEL HOMES DIVISION
UNITED STATES STEEL CORPORATION

/s/ D. H. Boyd
President

Attest: /s/ W. L. Licher
Asst. Secretary

Attachment

DOCUMENT 178

UNITED STATES STEEL HOMES Division
United States (USS) Steel Corporation
DAILY ACTIVITY REPORT

RESIDENTIAL

Date: 3/2/61 Sales Representative Grayson
Firm: Fortner Enterprises
Address: Louisville, Ky.
Person(s) talked with: _____
_____
Reason(s) for call: _____
_____
_____
Results of call: Fortner had 23 salesmen to attend sales training program at the plant.
Special Instructions to Home Office: _____
_____
_____
_____
Number of calls on this Company to Date: _____
When you plan to call on them again _____ (Date)

DOCUMENT 167

UNITED STATES STEEL HOMES
UNITED STATES STEEL HOMES Division
United States (USS) Steel Corporation
DAILY ACTIVITY REPORT

RESIDENTIAL

Date: 9/5/61 Sales Representative Grayson
Firm: Fortner Enterprises
Address: Louisville, Ky.
Person(s) talked with: Earl Smith, H. Miles, Joe Powell, Geo. Dannenfelser, Darrell Longest, Tom Hamilton and others.

Reason(s) for call: _____

_____

_____

Results of call: General meeting and inspection of Fortners subdivision re: Drywall problems, sink tops and window screen problems,

It was agreed that window screens in some houses was too light for proper operation.

These light screens will be replaced. The drywall problems are to be taken up with U. S. Gypsum & U.S.S.H. Engineering Depts.

An erection bulletin is to be prepared to cover the sealing of the sink tops at time of installation. Wrote one DPO for Fortner.

Special Instructions to Home Office _____

_____

_____

Number of calls on this Company to Date: _____

When you plan to call on them again _____ (Date)

DOCUMENT 243

May 8, 1962

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

Activity during the month of April was very low. Only one home order was received and it was shipped, leaving no back log of orders on hand. Through April, a total of 67 homes have been shipped to Golden Meadows Subdivision. There were 186 available lots in the Subdivision leaving 119 lots remaining to be built on.

The exhibition house has been moved to the Subdivision and is being used as a model. The dealer now has a total of 8 models and 3 spec houses.

Affidavit of Kenneth L. Anderson—July 15, 1966

Five closings were completed in the month of April for a grand total of 46 closings. Thus far, 82% of sales have been closed to permanent mortgages.

The accounts with both the Credit Corporation and the Homes Division are current and satisfactory.

WLL:ng

DOCUMENT 244

April 6, 1962

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

The subject dealer has produced only seven home shipments during the first quarter of 1962. During the month of March two home orders were received, three were shipped, and the back-log is zero. One of the March shipments was made to the Louisville Homebuilders Show for display by the dealer. After it has served its purpose at the exhibition, it will be moved to a lot in Golden Meadows Subdivision and offered for sale.

In addition to the Home Show house, the dealer has seven other models being shown in his subdivision. He also has three speculative houses.

There was only one loan closing completed in March for a total of forty-one since the beginning of the project. Sixty-two percent of total shipments have been closed to permanent mortgages.

Although sales are much slower than had been anticipated, the account appears to be satisfactory. The accounts with both the Credit Corporation and the Homes Division are current.

WLL:ng

DOCUMENT 245

March 5, 1962

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

Only one home order was received from the subject dealer during the month of February. Three home shipments were made leaving a backlog of one unshipped home at month end. Over the past four months only seven home orders have been received. This could be due to the recent holiday season and the inclement weather.

This dealer still has the seven models, which he is trying to dispose of, and three speculative houses. We have not yet shipped to his proposed new model home area.

There were no closings completed in February. To date there have been 40 closings — 36 under the Credit Corporation's loan and 4 under another arrangement prior to the conclusion of the Credit Corporation loan. Thirteen homes are sold and in the process of closing.

The account continues satisfactory from a financial viewpoint to both the Credit Corporation and the Homes Division.

WLL:ng

DOCUMENT 246

February 6, 1962

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

In the month of January four orders were received from the subject dealer and one was shipped. One model

has been sold and the dealer now has seven models which are being shown. All remaining models are for sale and the dealer plans to erect a new model area now that all the streets have been installed. Four houses have been built on speculation.

Thirty-six sales have been closed to permanent mortgages as of January 31, 1962. Four sales were closed in January. This dealer has performed well in arranging for closings to follow sales in a reasonably short period of time. Thirteen sales are now awaiting closings.

Interest on loans by the Credit Corporation is paid promptly and the account is current and satisfactory.

There is presently a credit balance in the Homes Division's miscellaneous account and the dealer has been informed we will remit our check in payment.

WLL:ng

DOCUMENT 247.

January 8, 1962

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

Through December 31, 1961, the subject dealer has ordered a total of 59 homes, all of which have been shipped. Eight of these homes are being used as models and four are built on speculation.

The following table reflects the monthly activity of home orders:

1960	ORDERS RECEIVED	ORDERS SHIPPED
November	4	3
December	1	1

1961	ORDERS RECEIVED	ORDERS SHIPPED
January	6	1
February	—	3
March	—	1
April	1	3
May	13	5
June	6	8
July	4	7
August	2	5
September	7	4
October	13	8
November	—	8
December	2	2
	—	—
	59	59
1962		
January	4	1
February	12	3
March	21	3
April	1	1
May	3	3
	—	—
	70	70

With the exception of the models and the speculative homes, all orders represent firm sales. At the close of the year there were 47 sales of which 32 have been closed to permanent mortgages.

Under the first loan agreement, one note covering land acquisition in the amount of $88,000 due the Credit Corporation, matured on December 31, 1961. The note has been extended to June 1, 1962. There are approximately 40 lots remaining in this particular area.

The Credit Corporation is satisfied with the performance of this dealer and interest on all obligations is paid to date.

The Homes Division's accounts are current and relations with the dealer are excellent.

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 248

December 11, 1961

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

At November 30, 1961, the backlog of unshipped orders was reduced to zero. Eight home shipments were made during the month of November but no new orders were received. One home order received in September was cancelled because the order was duplicated in October.

From November 1, 1960 to November 30, 1961, this account has produced 57 home orders, all of which have been shipped. Seven of the homes are being used as models and four are built on a speculative basis.

There have been 25 loan closings under the Credit Corporation's first loan agreement and 3 under the second loan agreement. Sales under the second loan agreement have not been generated as quickly as had been anticipated. This loan was consummated on August 2, 1961 and only 3 sales have resulted. With the unfavorable building weather coming on and with the holiday season approaching, this trend will probably not reverse itself for a few months. It is known that this dealer has 2 sales ahead at this time.

Both the Credit Corporation's and the Homes Division's accounts are satisfactory. Interest on the loans by the Credit Corporation is paid up to date and the Homes Division's miscellaneous account is current. A portion of the miscellaneous account is now past due but credits are being processed by the Order Service Division to balance the account.

WLL:hg

DOCUMENT 249

November 7, 1961

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

During the month of October we received a total of 13 orders from the subject dealer and shipped 8. Since November of 1960 we have received a total of 58 orders, of which 49 have been shipped, leaving a total of 9 unshipped orders on hand at October 31, 1961.

The following table shows the monthly order activity:

1960	ORDERS RECEIVED	ORDERS SHIPPED
November	4	3
December	1	1
1961		
January	6	1
February	—	3
March	—	1
April	1	3
May	13	5
June	6	8
July	4	7
August	2	6
September	7	4
October	13	8
	—	—
	57	49
November	0	8
	—	—
	57	57

Five houses are being used as models and are attractively furnished. Four houses have been erected on a speculative basis and the Credit Corporation is now al-

lowing the dealer to rotate on six speculative houses at a time.

To date, 23 cases have been closed to permanent mortgages. The dealer has been outstanding in arranging for loan closings to closely follow completions. This would indicate a good organization and costs are minimized through lower interest charges.

Under the first loan, which comprises approximately 142 lots, 46 houses have been erected and 21 have been closed. Under the Credit Corporation's second loan, which comprises 32 lots which are adjacent to those under the first loan, 3 houses have been erected and 2 have been closed. The note covering the first loan matures December 31, 1961, but the Credit Corporation is agreeable to extending it at that time due to their confidence in the dealer. The notes covering the second loan mature December 31, 1962.

The Homes Division accounts are current and the dealer is cooperative in every respect.

WLL:ng

DOCUMENT 250

October 4, 1961

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

Through September 30, 1961, we have received a total of 45 home orders from the subject dealer and 41 have been shipped, leaving 4 unshipped orders on hand. Five of these homes are being used as models. The models are furnished and staffed.

Thus far, 15 cases have been closed to permanent mortgages through Louisville Mortgage Service Company.

The Credit Corporation is allowing the dealer to rotate on 3 speculative houses at any one time. They now have two speculative houses erected. The Credit Corporation has disbursed on 30 cases under the first loan agreement and on 3 cases under the second agreement.

The dealer is performing very satisfactorily in the opinion of the Credit Corporation. They are active, cooperative and dependable. Interest payments have been made when due. However, at their present pace, they will not build out the first section in time to retire the note due December 31, 1961. The Credit Corporation is willing to extend the note at that time because of the business-like fashion in which they conduct their operation.

They are known to have a few sales ahead, but, since buyer approval is first cleared by Louisville Mortgage Service Company, the exact figure is unknown.

The Homes Division accounts with Fortner are satisfactory and a good relationship exists.

WLL:ng

DOCUMENT 251

August 29, 1961

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

The Credit Corporation consummated the second loan to the subject dealership on August 2, 1961. The loan consists of $59,000 for land acquisition and $403,400 for construction funds. The loan is secured by three notes due December 31, 1962.

Five houses are actively being used for models, and one has been approved by the Credit Cooperation for speculative purposes. The Credit Corporation has disbursed on 26 cases and 9 have been closed to permanent

mortgages. The permanent mortagee is the Louisville Mortgage Service Company.

All shipments, except the six mentioned above, represent prior sales. The delays in closings are due to the absence of a blanket FHA commitment. Each case is investigated individually.

The following table reflects the activity of shipments thus far:

1960	ORDERS RECEIVED	ORDERS SHIPPED
November	4	3
December	1	1
1961		
January	6	1
February	—	3
March	—	1
April	1	3
May	13	5
June	6	8
July	4	7
August	2	5
	—	—
	37	37
September	8	4
	—	—
	45	41

The experience of the Credit Corporation, and the Homes Division, in their transactions with this dealer has been satisfactory.

DOCUMENT 252

July 27, 1961

Mr. D. H. Boyd, President
W. L. Lieber, Assistant Treasurer

FORTNER ENTERPRISES, INCORPORATED
LOUISVILLE, KENTUCKY

The first loan made to the subject dealership by the Credit Corporation was consummated on October 28, 1960. The land acquisition loan is secured by two notes. One note in the amount of $88,000 matures on December 31, 1961, and the second in the amount of $231,920 matures on December 31, 1962. The construction loan on 187 lots is also secured by two notes. One note in the amount of $373,200 matures on December 31, 1961, and the second note in the amount of $1,362,180 matures on December 31, 1962.

The first shipments made to this project, known as Golden Meadows Subdivision, were five models beginning on November 22, 1960. Since that time, thirty additional orders have been received and all but four have been shipped. The date of the last order received was July 20, 1961 and the last shipment was on July 25.

The five models are still being used for display purposes. The Credit Corporation has disbursed on seventeen cases, including the five models. Four cases thus far have been closed to permanent mortgages.

The second loan has not yet been completely consummated. The Credit Corporation is awaiting certain documents from Fortner and no exceptional delay is anticipated.

The account with the Homes Division is current and satisfactory, and the Credit Corporation reports a good relationship.

WLL:ng

VOLUME II.

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DOCUMENT 494

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6/21/61	12663	944	Letter of Credit	61810-1	70	6/23/61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61810-1			2949.43
3% Kentucky Tax Applies			89.48
Prepaid Freight Charges			65.10
TOTAL AMOUNT DUE			3103.01

Received
Jun 22 '61 Batch No. 14
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000063	Dr.	3103.01	C	0.52.01.00-1	619983	Cr.	2949.43
				O	0.30.01.08-0	619983	Cr.	89.48
				P	0.30.03.00-1		Cr.	65.10
				Y				

DOCUMENT 610

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #212
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
3-5-62	15332	944-6	Letter of Credit	62610-1	212	3-2-62

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62610-1			3838.12
3% Kentucky Tax Applies			114.84
Prepaid Freight			81.84
NET AMOUNT DUE			4024.80

Received
Mar 16 '62 Batch No. 2
Data Processing
Center

Enclosed: One warranty

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	4024.80	C	0.52.01.00-1	619973	Cr.	3828.12
				O	0.30.01.08-0	619973	Cr.	114.84
				P	0.30.03.00-1		Cr.	81.84
				Y				

(No Distribution)

DOCUMENT 398

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #211
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-15-61	14431	944	Letter of Credit	62410-1	211	11-14-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62410-1			3300.17
3% Kentucky Tax Applies			99.01
Prepaid Freight			74.40
NET AMOUNT DUE			3473.58

Received
Nov 15 1961 Batch No. 10
T. A. B.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3473.68	C	0.52.01.00-1	619973	Cr.	3300.17
				O	0.30.01.08-0	619973	Cr.	99.01
				P	0.30.03.00-1		Cr.	74.40
				Y				

(No Distribution)

DOCUMENT 434

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 215
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
9-27-61	13845	944	Letter of Credit	62253-1	215	9-26-61

F.O.B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home # 62253-1			2996.90
3% Kentucky Tax Applies			89.91
Prepaid Freight			65.10
NET AMOUNT DUE			3151.91

Received
Sep 27 '61 Batch No. 17
Data Processing
Center

Enclosed: One warranty form

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3151.91	C	0.52.01.00-1	619973	Cr.	2996.90
				O	0.30.01.08-0	619973	Cr.	89.91
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 478

(USS) United States Steel Homes Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows Subdiv.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
7-21-61	13050	944	Letter of Credit	61820-1	210	7-28-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61820-1			2949.30
3% Kentucky Tax Applies			88.48
Prepaid Freight			65.10
NET AMOUNT DUE			3102.88

Received
Jul 25 '61 Batch No. 11
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00000.3	Dr.	3102.88	C	0.52.01.00-1	619973	Cr.	2949.30
				O	0.30.01.08-0	619973	Cr.	88.48
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 474

(USS) **United States Steel Homes Division of United States Steel Corporation**

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises
4125 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises
Golden Meadows, Lot #208
Valley Station, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
7/23/61	13108	944	Letter of Credit	61955-1	208	7/24/61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61955-1			2970.40
3% Kentucky Tax Applies			89.11
Prepaid Freight			65.10
NET AMOUNT DUE			3124.61

Received
Jul 27 '61 Batch No 14
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3124.61	C	0.52.01.00-1	618873	Cr.	2970.40
				O	0.30.01.08-0	619973	Cr.	89.11
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 589

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #389
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
4-27-62	15850	6-944	Letter of Credit	62848-1	389	4-25-62

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62848-1			2915.56
3% Kentucky Tax Applies			87.47
Prepaid Freight			65.10
NET AMOUNT DUE			3068.13

Received
Apr 27 '62 Batch No. 18
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3068.13	C	0.52.01.00-1	619973	Cr.	2915.56
				O	0.30.01.08-0	619973	Cr.	87.47
				P	0.30.03.00-1		Cr.	65.10
				Y.				

(No Distribution)

DOCUMENT 382

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, L
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
12-8-61	14685	944	Letter of Credit	62516-1	391	12-7-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62516-1			3331.44
3% Kentucky Tax Applies			99.94
Prepaid Freight			74.40
NET AMOUNT DUE			3505.78

Received
Dec 11 1961 Batch No. 4
T. A. B.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3505.78	C	0.52.01.00-1	619973	Cr.	3331.44
				O	0.30.01.08-0	619973	Cr.	99.94
				P	0.30.03.00-1		Cr.	74.40
				Y				

(No Distribution)

DOCUMENT 414

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 190
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
10-11-61	14029	944	Letter of Credit	62330-1	190	10-10-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62330-1			2903.85
3% Kentucky Tax Applies			87.12
Prepaid Freight			66.81
NET AMOUNT DUE			3057.78

Received
Oct 12 '61 Batch No. 6
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3057.78	C	0.52.01.00-1	619973	Cr.	2963.85
				O	0.30.01.08-0	619973	Cr.	87.12
				P	0.30.03.00-1		Cr.	66.81
				Y				

(No Distribution)

DOCUMENT 384

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #189
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-6-61	14328	944	Letter of Credit	62254-1	189	11-3-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62254-1			2939.41
3% Kentucky Tax Applies			88.18
Prepaid Freight			65.10
NET AMOUNT DUE			3092.69

Received
Nov 9 1961 Batch No. 3
T. A. B.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3092.69	C	0.52.01.00-1	619973	Cr.	2939.41
				O	0.30.01.08-0	619973	Cr.	88.18
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 480.

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
7-17-61	12984	944	Letter of Credit	61819-1	188	7-14-61

F. O. B.
New Albany, Ind.—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61819-1			2886.60
3% Ky. Tax Applies			86.60
Prepaid Freight			65.10
NET AMOUNT DUE			3038.30

See Invoice dated 7-27-61.

Received
Jul 18 1961 Batch No. 8
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-3	Dr.	3038.30	C	0.52.01.00-1	619973	Cr.	2886.60
				O	0.30.01.08-0	619973	Cr.	86.60
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 401

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 187
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-21-61	14513	944	Letter of Credit	62407-1	187	11-20-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62407-1			2906.36
3% Kentucky Tax Applies			87.19
Prepaid Freight			65.10
NET AMOUNT DUE			3058.65

Received
Nov 22 1961 Batch No. 15
T. A. B.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3058.65	C	0.52.01.00-1	619973	Cr.	2906.36
				O	0.30.01.08-0	619973	Cr.	87.19
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 418

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
10-25-61	14211	944	Letter of Credit	62366-1	186	10-24-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62366-1			2956.78
3% Kentucky Tax Applies			88.70
Prepaid Freight			65.10
NET AMOUNT DUE			3110.58

Received
Oct 26 1961 Batch No. 18
T. A. B.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3110.58	C	0.52.01.00-1	619973	Cr.	2956.78
				O	0.30.01.08-0	619973	Cr.	88.70
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 630

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #195
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
1-30-62	15064	944	Letter of Credit	62576-1	195	1-29-62

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62576-1			2695.98
3% Kentucky Tax Applies			80.88
Prepaid Freight			65.10
NET AMOUNT DUE			2841.96

Received
Jun 31 '62 Batch No. 18
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	2841.96	C	0.52.01.00-1	619973	Cr.	2695.98
				O	0.30.01.08-0	619973	Cr.	80.88
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 623

(USS) United States Steel Homes Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
2549 Charlestown Road
United States Steel Corporation
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadow, Lot #196
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
2-7-62	15132	944	Letter of Credit	62577-1	196	2-5-62

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62577-1			2934.35
3% Kentucky Tax Applies			88.03
Prepaid Freight			65.10
NET AMOUNT DUE			3087.48

Received
Feb 7 '62 Batch No. 4
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3087.48	C	0.52.01.00-1	619973	Cr.	2934.35
				O	0.30.01.08-0	619973	Cr.	88.03
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 411

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #182
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
10-9-61	13979	944	Letter of Credit	62289-1	182	10-5-61

F.O.B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62289-1			2837.48
3% Kentucky Tax Applies			85.12
Prepaid Freight			65.10
NET AMOUNT DUE			2987.70

Received
Oct 10 '61 Batch No. 4
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	2987.70	C	0.52.01.00-1	619973	Cr.	2837.48
				O	0.30.01.08-0	619973	Cr.	85.12
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 404

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #202
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-10-61	14390	944	Letter of Credit	62408-1	202	11-9-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62408-1			2973.16
3% Kentucky Tax Applies			89.19
Prepaid Freight			65.10
NET AMOUNT DUE			3127.45

Received
Nov 11 1964 Batch No. 7
T. A. B.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3127.45	C	0.52.01.00-1	619973	Cr.	2973.16
				O	0.30.01.08-0	619973	Cr.	89.19
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT ——

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 176
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-9-61	14367	944	Letter of Credit	62409-1	176	11-8-61

F.C.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62409-1			2967.16
3% Kentucky Tax Applies			89.01
Prepaid Freight			65.10
NET AMOUNT DUE			3121.27

Received
Nov 11 1961 Batch No. 6
T. A. B.

DOCUMENT 450

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #79
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
8-9-61	13290	944	Letter of Credit	61902-1	79	8-8-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61902-1			3522.46
3% Kentucky Tax Applies			105.67
Prepaid Freight			74.96
NET AMOUNT DUE			3703.09

Received
Aug 9 1961 Batch No. 6
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3703.09	C	0.52.01.00-1	619973	Cr.	3522.46
				O	0.30.01.08-0	619973	Cr.	105.67
				P	0.30.03.00-1		Cr.	74.96
				Y				

(No Distribution)

DOCUMENT 412

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #80
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
10-6-61	13973	944	Letter of Credit	62251-1	80	10-5-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62251-1			2845.45
3% Kentucky Tax Applies			85.36
Prepaid Freight			65.10
NET AMOUNT DUE			2995.91

Received
Oct 10 '61 Batch No. 12
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	2995.91	C	0.52.01.00-1	619973	Cr.	2845.45
				O	0.30.01.08-0	619973	Cr.	85.36
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 552

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 81
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-25-62	16196	6-944	Letter of Credit	63058-1	81	5-24-62

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #63058-1			3689.72
3% Kentucky Tax Applies			109.19
Prepaid Freight			81.31
NET AMOUNT DUE			3830.22

Received
May 29 '62 Batch No. 18
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3830.22	C	0.52.01.00-1	619973	Cr.	3639.72
				O	0.30.01.08-0	619973	Cr.	109.19
				P	0.30.03.00-1		Cr.	81.31
				Y				

(No Distribution)

DOCUMENT 618

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #82
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
2-14-62	15183	944	Letter of Credit	62575-1	82	2-13-62

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62575-1			3968.52
3% Kentucky Tax Applies			107.06
Prepaid Freight			80.14
NET AMOUNT DUE			3755.72

Received
Feb 14 '62 Batch No. 19
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3755.72	C	0.52.01.00-1	619973	Cr.	3568.52
				O	0.30.01.08-0	619973	Cr.	107.06
				P	0.30.03.00-1		Cr.	80.14
				Y				

(No Distribution)

DOCUMENT 609

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #83
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
3-30-62	15572	6-944	Letter of Credit	62576-1	83	3-30-62

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62576-1			2905.63
3% Kentucky Tax Applies			87.17
Prepaid Freight			65.10
NET AMOUNT DUE			3057.90

Received
Mar 30 '62 Batch No. 20
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3057.90	C	0.52.01.00-1	619973	Cr.	2905.63
				O	0.30.01.08-0	619973	Cr.	87.17
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 586

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #84
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-7-62	15952	6-944	Letter of Credit	62985-1	84	5-4-62

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62985-1			2895.16
3% Kentucky Tax Applies			86.85
Prepaid Freight			65.10
NET AMOUNT DUE			3047.11

Received
May 8 '62 Batch No. 14
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3047.11	C	0.52.01.00-1	619973	Cr.	2895.16
				O	0.30.01.08-0	619973	Cr.	86.85
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 579

(USS) United States Steel Homes Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #410
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-21-62	16103	6-944	Letter of Credit	63054-1	410	5-18-62

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #63054-1			2920.89
3% Kentucky Tax Applies			87.63
Prepaid Freight			65.10
NET AMOUNT DUE			3073.62

Received
May 22 '62 Batch No. 14
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3073.62	C	0.52.01.00-1	619978	Cr.	2920.89
				O	0.30.01.08-0	619973	Cr.	87.63
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 518

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. 3rd Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 50
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
4-24-61	N 11875	944	Letter of Credit	61613-1	50	4-21-61

F. O. B. New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61613-1			3161.20
3% Ky. Tax Applies			94.84
Prepaid Freight			60.90
NET AMOUNT DUE			3316.94

Received
Apr 27 1961 Batch No. 4
Data Processing
Center

Enclosed: 1 Warranty Form.

Account No.	Code		Amount		Account No.	Code		Amount
0.5				C	0.52.01.00-1	619983	Cr.	3161.20
0.15.01.00-0	00-00-0-3	Dr.	3316.94	O	0.30.01.08-0	619983	Cr.	94.84
				P	0.30.03.00-1		Cr.	60.90
				Y				

(No Distribution)

DOCUMENT 528

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third St.
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
2-23-61	N 11222	944	Letter of Credit	61240-1	6-20	2-21-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61240-1			3,628.18
3% Kentucky Sales Tax Applies			108.85
Prepaid Freight Charges			76.27
NET AMOUNT DUE			3,813.30

Received
Feb 27 1961 Batch No. 3
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-3	Dr.	3813.30	C	0.52.01.00-1	619983	Cr.	3628.18
				O	0.30.01.08-0	619983	Cr.	108.85
				P	0.30.03.00-1		Cr.	76.27
				Y				

(No Distribution)

DOCUMENT 529

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South 3rd Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
2-21-61	N 11186	944	Letter of Credit	61241-1	9-19	2-20-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home 61241-1			2,898.00
3% Kentucky Sales Tax Applies			86.94
Prepaid Freight Charges			60.90
NET AMOUNT DUE			3,045.84

Received
Feb 27 1961 Batch No. 3
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-3	Dr.	3045.84	C	0.52.01.00-1	619983	Cr.	2898.00
				O	0.15.01.03-1	619983	Cr.	86.94
				P	0.30.03.00-1		Cr.	60.90
				Y				

(No Distribution)

DOCUMENT 529

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
3-10-61	N 11186	944	Letter of Credit	61241-1	9-19	2-20-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
To make correction in account distribution on above invoice originally issued 2-21-61			

Account No.	Code		Amount		Account No.	Code		Amount
			Tax Coding Error					
0.15.01.03-1	619983	Dr.	86.94	C O P Y	0.30.01.08-0	619983	Cr.	86.94

DOCUMENT 508

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 21
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-29-61	12309	944	Letter of Credit	61730-1	104	5-26-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61730-1			3137.20
3% Ky. Tax Applies			94.12
Prepaid Freight			61.60
NET AMOUNT DUE			3292.92

Received
May 31 '61 Batch No: 19
Data Processing
Center

Enclosed: 1 Warranty Form.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-3	Dr.	3292.92	C	0.52.01.00-1	619983	Cr.	3137.20
				O	0.30.01.08-0	619983	Cr.	94.12
				P	0.30.03.00-1		Cr.	61.60
				Y				

DOCUMENT 515

(USS) United States Steel Homes Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 336
Valley Station, Jefferson Co.,
Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-17-61	12140	944	Letter of Credit	61647-1	336	5-16-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61647-1			3659.28
3% Ky. Tax Applies			109.78
Prepaid Freight			75.34
NET AMOUNT DUE			3844.40

Received
May 18 1961 Batch No. 9
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-3	Dr.	3844.40	C	0.52.01.00-1	619983	Cr.	3659.28
				O	0.30.01.08-0	619983	Cr.	109.78
				P	0.30.03.00-1		Cr.	75.34
				Y				

(No Distribution)

DOCUMENT 496

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6/19/61	12616	944	Letter of Credit	61818-1	52	6/16/61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61818-1			2941.30
3% Kentucky Tax Applies			88.24
Prepaid Freight Charges			65.10
TOTAL AMOUNT DUE			3094.64

Received
Jun 19 '61 Batch No. 12
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3094.64	C	0.52.01.00-1	619983	Cr.	2941.30
				O	0.30.01.08-0	619983	Cr.	88.24
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 504

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South 3rd Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises
Golden Meadows
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6/5/61	12410	944	Letter of Credit	61729-1	51	6/1/61

F. O. B.
Letter of Credit

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61729-1			2886.60
3% Kentucky Tax Applies			86.60
Prepaid Freight Charges			60.90
TOTAL AMOUNT DUE			3034.10

Received
Jun 6 1961 Batch No. 1
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3034.10	C	0.52.01.00-1	619983	Cr.	2886.60
				O	0.30.01.08-0	619983	Cr.	86.60
				P	0.30.03.00-1		Cr.	60.90
				Y				

DOCUMENT 510

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South 3rd Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #66
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5/23/61	12229	944	Letter of Credit	61731-1	66	5/22/61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61731-1			3145.20
3% Kentucky Tax Applies			94.36
Prepaid Freight Charges			60.90
TOTAL AMOUNT DUE			3300.46

Received
May 24 '61 Batch No. 15
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3300.46	C	0.52.01.00-1	619983	Cr.	3145.20
				O	0.30.01.08-0	619983	Cr.	94.35
				P	0.30.03.00-1		Cr.	60.90
				Y				

DOCUMENT 511

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #50
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5/22/61	12198	944	Letter of Credit	61712-1	69	5/19/61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61712-1			3638.18
3% Kentucky Tax Applies			108.83
Prepaid Freight Charges			76.47
TOTAL AMOUNT DUE			3813.50

Received
May 23 '61 Batch No. 14
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3813.50	C	0.52.01.00-1	619983	Cr.	3628.18
				O	0.30.01.08-0	619983	Cr.	108.85
				P	0.30.03.00-1		Cr.	76.47
				Y				

(No Distribution)

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 487

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-30-61	12792	944	Letter of Credit	61711-1	323	6-23-61

F. O. B. New Albany, Ind.—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61711-1			4513.77
3% Ky. Tax Applies			135.41
Prepaid Freight			100.19
NET AMOUNT DUE			4749.37

Received
Jul 1 '61 Batch No. 19
Data Processing
Center

Enclosed: I Warranty Form

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-3	Dr.	4749.37	C	0.52.01.00-1	619973	Cr.	4513.77
				O	0.30.01.08-0	619973	Cr.	135.41
				P	0.30.03.00-1		Cr.	100.19
				Y				

(No Distribution)

DOCUMENT 493

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises
Golden Meadows
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6/23/61	12689	944	Letter of Credit	61827-1	65	6/22/61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61827-1			3163.80
3% Kentucky Tax Applies			94.91
Prepaid Freight Charges			65.10
TOTAL AMOUNT DUE			3323.81

Received
Jun 26 '61 Batch No. 16
Data Processing
Center

Enc: One Warranty Form

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3323.81	C	0.52.01.00-1	619983	Cr.	3163.80
				O	3.30.01.08-0	619983	Cr.	94.91
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 520

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 57
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
4-18-61	N 11812	944	Letter of Credit	61222-1	10-57	4-14-61

F. O. B.
New Albany, Ind.—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61222-1			3471.36
3% Ky. Sales Tax Applies			104.14
Prepaid Freight			70.85
NET AMOUNT DUE			3646.35

Received
April 24 1961 Batch No. 3
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-3	Dr.	3646.35	C	0.52.01.00-1	619983	Cr.	3471.36
				O	0.30.01.08-0	619983	Cr.	104.14
				P	0.30.03.00-1		Cr.	70.85
				Y				

(No Distribution)

DOCUMENT 500

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #363
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6/12/61	N 12519	944	Letter of Credit	61714-1	363	6/9/61

F. O. B.
New Albany Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61714-1			3602.28
3% Kentucky Tax Applies			108.07
Prepaid Freight Charges			76.94
TOTAL AMOUNT DUE			3787.29

Received
June 13 1961 Batch No. 6
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3787.29	C	0.52.01.00-1	619983	Cr.	3602.28
				O	0.30.01.08-0	619983	Cr.	108.07
				P	0.30.03.00-1		Cr.	76.94
				Y				

(No Distribution)

DOCUMENT 486

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-30-61	12793	944	Letter of Credit	61901-1	59	6-28-61

F. O. B.
New Albany, Ind.—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61901-1			4497.97
3% Ky. Tax Applies			194.94
Prepaid Freight			98.89
NET AMOUNT DUE			4731.80

Received
Jul 1 '61 Batch No. 19
Data Processing
Center

Enclosed: Warranty Form

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-3	Dr.	4731.80	C	0.52.01.00-1	619973	Cr.	4497.97
				O	0.30.01.08-0	619973	Cr.	134.94
				P	0.30.03.00-1		Cr.	98.89
				Y				

(No Distribution)

DOCUMENT 519

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South 3rd Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 58
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
4-21-61	N 11868	944	Letter of Credit	61223-1	11-58	4-20-61

F. O. B.
New Albany, Ind.—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61223-1			2890.96
3% Ky. Tax Applies			86.83
Prepaid Freight Charges			60.90
NET AMOUNT DUE			3038.59

Received
Apr 27 1961 Batch No. 4
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-03	Dr.	3038.59	C	0.52.01.00-1	619983	Cr.	2890.96
				O	0.30.01.08-0	619983	Cr.	86.73
				P	0.30.03.00-1		Cr.	60.90
				Y				

(No Distribution)

DOCUMENT 471

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises
Golden Meadows, Lot #62
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
7/26/61	13112	944	Letter of Credit	61979-1	62	7/25/61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61979-1			3164.71
3% Kentucky Tax Applies			94.94
Prepaid Freight			65.41
NET AMOUNT DUE			3325.06

Received
Jul 27 '61 Batch No. 19
Data Processing
Center

Enclosed: One Warranty

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3325.06	C	0.52.01.00-1	619973	Cr.	3164.71
				O	0.30.01.08-0	619973	Cr.	94.94
				P	0.30.03.00-1		Cr.	65.41
				Y				

(No Distribution)

DOCUMENT 499

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6/13/61	12529	944	Letter of Credit	61809-1	63	6/12/63

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61809-1			2962.24
3% Kentucky Tax Applies			88.87
Prepaid Freight Charges			65.10
TOTAL AMOUNT DUE			3116.21

Received
Jun 14 1961 Batch No. 7
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3116.21	C	0.52.01.00-1	619983	Cr.	2962.24
				O	0.30.01.08-0	619983	Cr.	88.87
				P	0.30.03.00-1		Cr.	65.10
				Y				

DOCUMENT 481

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 367
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
7-14-61	12983	944	Letter of Credit	61957-1	367	7-13-61

F. O. B.
New Albany, Ind.—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61957-7			4497.97
3% Ky. Tax Applies			134.94
Prepaid Freight			98.58
NET AMOUNT DUE			4731.49

Received
Jul 18 1961 Batch No. 7
Data Processing
Center

Enclosed: 1 Warranty Form

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-3	Dr.	4731.49	C	0.52.01.00-1	619973	Cr.	4497.97
				O	0.30.01.08-0	619973	Cr.	134.94
				P	0.30.03.00-1		Cr.	98.58
				Y				

(No Distribution)

DOCUMENT 507

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises
4123 South Third
Louisville, Kentucky

SHIP TO
Fortner Enterprises
Golden Meadows, Lot 319
Valley Station, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-31-61	12349	944	Letter of Credit	61713-1	319	5-29-61

F. O. B.
New Albany, Ind.—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home # 61713-1			4284.60
3% Ky. Tax Applies			128.54
Prepaid Freight			90.87
NET AMOUNT DUE			4503.91

Received
Jun 1 '61 Batch No. 21
Data Processing
Center

Enclosed: 1 Warranty Form

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-3	Dr.	4503.91	C	0.52.01.00-1	619983	Cr.	4264.60
				O	0.30.01.08-0	619983	Cr.	128.54
				P	0.30.03.00-1		Cr.	90.77
				Y				

(No Distribution)

DOCUMENT 470

(USS) United States Steel Homes Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 67
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
7-31-61	13147	944	Letter of Credit	61970-1	67	7-27-61

F. O. B.
New Albany, Ind.—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61980-1			3137.20
3% Ky. Tax Applies			94.12
Prepaid Freight			65.10
NET AMOUNT DUE			3296.42

Received
Aug 1 '61 Batch No. 17
Data Processing
Center

Enclosed: 1 Warranty Form

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-3	Dr.	3296.42	C	0.52.01.00-1	619973	Cr.	3137.20
				O	0.30.01.08-0	619973	Cr.	94.12
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 521

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South 3rd Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 21
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
3-22-61	N 11491	944	Letter of Credit	61224-1	8-21	3-20-61

F. O. B.
New Albany, Ind.—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61224-1			3475.90
3% Ky. Sales Tax Applies			104.28
Prepaid Freight			71.21
NET AMOUNT DUE			3652.39

Received
Mar 27 1961 Batch No. 3
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-3	Dr.	3652.49	C	0.52.01.00-1	619983	Cr.	3475.90
				C	0.30.01.08-0	619983	Cr.	104.28
				P	0.30.03.00-1		Cr.	72.21
				Y				

(No Distribution)

DOCUMENT 484

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises
4125 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises
Lot 307
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
7-10-61	12919	944	Letter of Credit	61956-1	307	7-7-61

F.O.B.
New Albany, Ind.—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61956-1			4513.77
3% Ky. Tax Applies			135.41
Prepaid Freight			99.82
NET AMOUNT DUE			4749.00

Received
Jul 10 1961 Batch No. 3
Data Processing
Center

Enclosed: 1 Warranty Form

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-3	Dr.	4749.00	C	0.52.01.00-1	619973	Cr.	4513.77
				O	0.30.01.08-0	619973	Cr.	135.41
				P	0.30.03.00-1		Cr.	99.82
				Y				

(No Distribution)

DOCUMENT 449

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Leelah Court
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
8-7-61	13244	944	Letter of Credit	62069-1	60	8-4-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62069-1			3085.10
3% Kentucky Tax Applies			92.55
Prepaid Freight			65.10
NET AMOUNT DUE			3242.75

Received
Mar 8 1961 Batch No. 4
Data Processing
Center

Enclosed: One Warranty

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3242.75	C	0.52.01.00-1	619973	Cr.	3085.10
				O	0.30.01.08-0	619973	Cr.	92.55
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 448

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises
Golden Meadows Lot #305
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
8-4-61	13238	944	Letter of Credit	62020-1	305	8-3-61

F.O.B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62020-1			3677.23
3% Kentucky Tax Applies			110.32
Prepaid Freight			79.92
NET AMOUNT DUE			3867.47

Received
Aug 7 1961 Batch No. 3
Data Processing
Center

Enclosed: One Warranty

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3867.47	C	0.52.01.00-1	619973	Cr.	3677.23
				O	0.30.01.08-0	619973	Cr.	110.32
				P	0.30.03.00-1		Cr.	79.92
				Y				

(No Distribution)

DOCUMENT 431

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 710
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
9-21-61	13764	944	Letter of Credit	62255-1	710	9-20-61

F.O.B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62255-1			3840.00
3% Kentucky Tax Applies			115.20
Prepaid Freight			81.22
NET AMOUNT DUE			4036.42

Received
Sep 25 '61 Batch No. 15
Data Processing
Center

Enclosed: One Warranty Form

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	4036.42	C	0.52.61.00-1	619973	Cr.	3840.00
				O	0.30.01.08-0	619973	Cr.	115.20
				P	0.30.03.00-1		Cr.	81.22
				Y				

(No Distribution)

DOCUMENT 465

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 64
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Crd. No.	Customer Ord. No.	Shipping Date
8-31-61	13558	944	Letter of Credit	62210-1	64	8-31-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62210-1			3308.70
3% Kentucky Tax Applies			99.26
Prepaid Freight			75.64
NET AMOUNT DUE			3483.60

Received
Sep 5 '61 Batch No. 24
Data Processing
Center

Enclosed: One warranty form

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3482.60	C	0.52.01.00-1	619973	Cr.	3308.70
				O	0.30.01.08-0	619973	Cr.	99.26
				P	0.30.03.00-1		Cr.	75.64
				Y				

(No Distribution)

DOCUMENT 433

(USS) United States Steel Homes Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
9-26-61	13822	944	Letter of Credit	62250-1	68	9-25-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home # 62250-1			2812.70
3% Kentucky Tax Applies			84.38
Prepaid Freight			65.10
NET AMOUNT DUE			2962.18

Received
Sep 27 '61 Batch No. 16

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	2962.18	C	0.52.01.00-1	619973	Cr.	2812.70
				O	0.30.01.08-0	619973	Cr.	84.48
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 429

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises
Golden Meadows, Lot 61
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
9-18-61	13713	944	Letter of Credit	62239-1	61	9-15-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home # 62239-1			4438.84
3% Kentucky Tax Applies			133.17
Prepaid Freight			99.01
NET AMOUNT DUE			4671.02

Received
Sep 19 '61 Batch No. 10
Data Processing
Center

Enclosed: One Warranty Form

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	4671.02	C	0.52.01.00-1	619973	Cr.	4438.84
				O	0.30.01.08-0	619973	Cr.	133.17
				P	0.30.03.00-1		Cr.	99.01
				Y				

(No Distribution)

DOCUMENT 527

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
2-27-61	N 11251	944	Letter of Credit	61221-1	7-28	2-24-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61221-1			4,337.72
3% Kentucky Sales Tax Applies			130.13
Prepaid Freight Charges.			92.37
NET AMOUNT DUE			4[illegible]0.22

Received
Mar 2 1961 Batch No. 4
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-3	Dr.	4560.22	C	0.52.01.00-1	619983	Cr.	4337.72
				O	0.30.01.08-0	619983	Cr.	130.13
				P	0.30.03.00-0		Cr.	92.37
				Y				

(No Distribution)

DOCUMENT 640

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. 36th Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Lot #71, Golden Meadows
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-28-60	N 10289	944	Model Home	60966-1	2-71	11-25-60

F. O. B.
New Albany, Ind.—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home # 60966-1			3690.41
3% Ky. Sales Tax Applies			110.71
Prepaid Freight			69.60
NET AMOUNT DUE			3870.72

Received
Nov 30 '60 Batch No. 16
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-4	Dr.	3870.72	C	0.52.01.00-1	619984	Cr.	3690.41
				O	0.30.01.08-0	619984	Cr.	110.71
				P	0.30.03.00-1		Cr.	69.60
				Y				

(No Distribution)

DOCUMENT 549

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Lot 27, Golden Meadows
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
1-11-61	N 10779	944	Model Home	61028-1	4-27	1-6-61

F. O. B.
New Albany, Ind.—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61028-1			3591.60
3% Ky. Sales Tax Applies			107.75
Prepaid Freight			74.18
NET AMOUNT DUE			3773.53

Received
Jan 18 1960 Batch No. 1
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-4	Dr.	3773.53	C	0.52.01.00-1	619984	Cr.	3591.60
				O	0.30.01.08-0	619984	Cr.	107.75
				P	0.30.03.00-1		Cr.	74.18
				Y				

(No Distribution)

DOCUMENT 635

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third St.
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
12-30-60	N 10698	944	Model Home	60999-1	5-26	12-30-60

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #60999-1			3,099.35
3% Kentucky Sales Tax Applies			91.78
			3,151.13
Prepaid Freight Charges			60.90
NET AMOUNT DUE			3,212.03

Received
Jan 4 1960 Batch No. 6
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-4	Dr.	3212.03	C	0.52.01.00-1	619984	Cr.	3059.35
				O	0.30.01.08-0	619984	Cr.	91.78
				P	0.30.03.00-1		Cr.	60.90
				Y				

(No Distribution)

DOCUMENT 641

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #56
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-23-60	N 10256	944	Model Home	60965-1	1-56	11-22-60

F. O. B.
New Albany, Ind.—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #60965-1			3145.20
3% Ky. Sales Tax Applies			94.36
Prepaid Freight			60.90
NET AMOUNT DUE			3300.46

Received
Nov 28 1960 Batch No. 5
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-4	Dr.	3300.46	C	0.52.01.00-1	619984	Cr.	3145.20
				O	0.30.01.08-0	619984	Cr.	94.36
				P	0.30.03.00-1		Cr.	60.90
				Y				

(No Distribution)

DOCUMENT 603

(USS) United States Steel Homes Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
2549 Charlestown Road
United States Steel Corporation
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Kentucky Home Show
Kentucky State Fair Grounds
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
3-19-62	15423	944-6	Letter of Credit	62680-1	ES-1	3-16-62

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62680-1			3416.67
3% Kentucky Tax Applies			102.50
Prepaid Freight			75.33
NET AMOUNT DUE			3594.50

Received
Mar 20 '62 Batch No. 14
Data Processing
Center

Enclosed: One Warranty

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3594.50	C	0.52.01.00-1	619973	Cr.	3416.67
				O	0.30.01.08-0	619973	Cr.	102.50
				P	0.30.03.00-1		Cr.	75.33
				Y				

(No Distribution)

DOCUMENT 460

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #25
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
8-28-61	13470	944	Letter of Credit	62180-1	25	8-25-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62180-1			3014.48
3% Kentucky Tax Applies			90.43
Prepaid Freight			65.10
NET AMOUNT DUE			3170.01

Received
Aug 29 '61 Batch No. 20
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3179.01	C	0.52.01.00-1	619973	Cr.	3014.48
				O	0.30.01.08-0	619973	Cr.	90.43
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 639

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South 3rd Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises
Golden Meadows, Lot 72
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-30-60	N 10353	944	Model Home	61000-1	3-72	11-30-60

F. O. B.
New Albany, Ind.—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #61000-1			4730.60
3% Ky. Sales Tax Applies			141.92
Prepaid Freight			90.36
NET AMOUNT DUE			4962.88

Received
Dec 2 '60 Batch No. 7
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	00-00-0-4	Dr.	4962.88	C	0.52.01.00-1	619984	Cr.	4730.60
				O	0.30.01.08-0	619984	Cr.	141.92
				P	0.30.03.00-1		Cr.	90.36
				Y				

(No Distribution)

DOCUMENT 417

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #48
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
10-27-61	14235	944	Letter of Credit	62329-1	48	10-26-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62329-1			3685.57
3% Kentucky Tax Applies			110.57
Prepaid Freight			82.15
NET AMOUNT DUE			3878.29

Received
Oct 31 1961 Batch No. 20
T. A. B.

Enclosed: One Warranty Form

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3878.29	C	0.52.01.00-1	619973	Cr.	3685.57
				O	0.30.01.08-0	619973	Cr.	110.57
				P	0.30.03.00-1		Cr.	82.15
				Y				

(No Distribution)

DOCUMENT 424

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot 192
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
10-16-61	14074	944	Letter of Credit	62331-1	192	10-13-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62331-1			3288.81
3% Kentucky Tax Applies			98.66
Prepaid Freight			77.00
NET AMOUNT DUE			3464.47

Received
Oct 16 '61 Batch No. 10
Data Processing
Center

Enclosed: One Warranty Form

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3464.47	C	0.52.01.00-1	619973	Cr.	3288.81
				O	0.30.01.08-0	619973	Cr.	98.66
				P	0.30.03.00-1		Cr.	77.00
				Y				

(No Distribution)

DOCUMENT 624

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #78
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
2-16-62	15199	944	Letter of Credit	62633-1	78	2-15-62

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62633-1			3199.79
3% Kentucky Tax Applies			95.99
Prepaid Freight			74.40
NET AMOUNT DUE			3370.18

Feb 19 '62 Batch No. 11

Enclosed: One Warranty

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3370.18	C	0.52.01.00-1	619973	Cr.	3199.79
				O	0.30.01.08-0	619973	Cr.	95.99
				P	0.30.03.00-1		Cr.	74.40
				Y				

(No Distribution)

DOCUMENT 402

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third
Louisville, Ky.

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #185
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-8-61	14361	944	Letter of Credit	62406-1	185	11-7-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62406-1			3084.50
3% Kentucky Tax Applies			92.54
Prepaid Freight			65.10
NET AMOUNT DUE			3242.14

Received
Nov 9 1961 Batch No. 5
T. A. B.

Enclosed: One Warranty Form

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3242.14	C	0.52.01.00-1	619973	Cr.	3084.50
				O	0.30.01.08-0	619973	Cr.	92.54
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

DOCUMENT 416

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #477
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
10-31-61	14291	944	Letter of Credit	62367-1	477	10-31-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62367-1			3850.48
3% Kentucky Tax Applies			115.51
Prepaid Freight			82.03
NET AMOUNT DUE			4048.02

Received
Nov 1 1961 Batch No. 24
T. A. B.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	4048.02	C	0.52.01.00-1	619973	Cr.	3850.48
				O	0.30.01.08-0	619973	Cr.	115.51
				P	0.30.03.00-1		Cr.	82.03
				Y				

(No Distribution)

DOCUMENT 400

(USS) **United States Steel Homes**
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #412
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-24-61	14528	944	Letter of Credit	62405-1	412	11-21-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62405-1			3591.71
3% Kentucky Tax Applies			107.75
Prepaid Freight			78.90
NET AMOUNT DUE			3778.36

Received
Nov 27 1961 Batch No. 18
T. A. B.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3778.36	C	0.52.01.00-1	619973	Cr.	3591.71
				O	0.30.01.08-0	619973	Cr.	107.75
				P	0.30.03.00-1		Cr.	78.90
				Y				

(No Distribution)

DOCUMENT 399

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #478
Louisville, Kentucky

Please Refer To This Invoice By
Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-3-61	14316	944	Letter of Credit	62392-1	478	11-2-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62392-1			3793.31
3% Kentucky Tax Applies			113.80
Prepaid Freight			83.70
NET AMOUNT DUE			3990.81

Received
Nov 9 1961 Batch No. 2
T. A. B.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000003	Dr.	3990.81	C	0.52.01.00-1	619973	Cr.	3793.31
				O	0.30.01.08-0	619973	Cr.	113.80
				P	0.30.03.00-1		Cr.	83.70
				Y				

(No Distribution)

DOCUMENT 378

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
12-28-61	14869	944	Model Home	62515-1	49	12-27-61

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Registered Home #62515-1			3092.83
3% Kentucky Tax Applies			92.78
Prepaid Freight			65.10
NET AMOUNT DUE			3250.71

Received
Dec 28 1961 Batch No. 18
T. A. B.

Enclosed: One Warranty

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.00-0	000004	Dr.	3250.71	C	0.52.01.00-1	619974	Cr.	3092.83
				O	0.30.01.08-0	619974	Cr.	92.78
				P	0.30.03.00-1		Cr.	65.10
				Y				

(No Distribution)

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 379

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO:
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
12-20-61	14817	944	No Charge	73457		12-6-61

F. O. B.
Via Company Truck

Description	Quan. Shipped	Unit Price	Invoice Amount
2C Top 60 ES DRCO LH Gray (For Homes #61730, Lot #104, #61810, Lot #70, #61731, Lot #66)	3		N/C
2C Top ES DBCO LH Pink (For Homes #61809-1 Lot #27)	2		N/C
2C Top 60 ES DBCO LH Flame (For Home #61712, Lot #69, and #61613-1, Lot #50)	2		N/C
2C Top 60 ES DBCO LH White (For Home #62069, Lot #60)	1		N/C
13 B Top 92x83 ES DBMR RH Pink (For Home #61957, Lot #367)	1		N/C

Note: To replace defective Tops.

Received
Dec 22 1961 Batch No. 13
T. A. B.

(No Distribution)

DOCUMENT 558

(USS) United States Steel Homes Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-26-62	16559	944	No Charge	74364		6-20-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
For #71:			
11A Top 60 DBCO	1		N/C
3J Top 79 ES MRCO LH	1		N/C
For #70:			
2C Top 60 ES DBCO LH	1		N/C
1A Top	1		N/C
For #64:			
1A Top	1		N/C
2C Top 60 ES DBCO LH	1		N/C

Note: Replace all above with postform Gold/White Replacing delamination.

Received
June 26 '62 Batch No. 15
Data Processing
Center

(No Distribution)

DOCUMENT 492

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-29-61	12748	944	No Charge	72523		6-20-61

F. O. B.
Shipped with Home 61810-1

Description	Quan. Shipped	Unit Price	Invoice Amount
DE-62D Header for 5′ Stl.	1		N/C

Dealer reported short.

Received
Jul 1 '61 Batch No. 19
Data Processing
Center

(No Distribution)

DOCUMENT 397

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4125 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-20-61	14496	944	No Charge	73357		11-14-61

F. O. B.
S/W #62410-1

Description	Quan. Shipped	Unit Price	Invoice Amount
Gutterboard AZ-39T	474		N/C

Note: Above short on 4 #710 plans.

Received
Nov 22 1961 Batch No. 14
T. A. B.

(No Distribution)

DOCUMENT 447

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
9-29-61	13939	944	No Charge	73121		9-29-61

F. O. B.
Deliver our Truck

Description	Quan. Shipped	Unit Price	Invoice Amount
ED-53D x 6 Nulee	70		N/C

Note: Error in S. O. on #62253-1—Short.

Received
Oct 3 '61 Batch No. 21
Data Processing
Center

(No Distribution)

DOCUMENT 457

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
24-61	13449	944	Net 30 Days	72843		8-18-61

F. O. B.
Dealer Pick Up

Description	Quan. Shipped	Unit Price	Invoice Amount
* AT 60 D Exterior Door 3-lite RH	1	22.76	22.76
*AT 60 G Exterior Door Col. LH	1	23.69	23.69
*2C Top 60 ES DBCO LH Pink	1	30.29	30.29
13 B Top 92 x 83 ES Door LH CR.	1	70.39	70.39
*RM 1230 L. Cab. Wall Pink LH	1	15.20	15.20
Screen 5' Win. Beacon	6	2.97	17.82
			180.15
3% Kentucky Tax Applies			5.40
NET AMOUNT DUE			185.55

*4 items to correct hand of # 210, #61820-1 that dealer ordered in error.
Subject to Credit on A.R.M. 9871

Received
Aug 25 '61 Batch No. 18
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01.0	000009	Dr.	185.55	C	0.52.01.01.1	619979	Cr.	180.15
				O	0.30.01.08.0	619979	Cr.	5.40
				P				
				Y				

(No Distribution)

DOCUMENT 587

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-15-62	16056	944	No Charge	74165		5-9-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
DB-28A Plain 28 2-Face 4"	1		N/C

Note: Short in shipment (#62248-1)

Received
May 16 '62 Batch No. 10
Data Processing
Center

(No Distribution)

DOCUMENT 580

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-22-62	16145	944	No Charge	74209		5-16-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
DS48A Steel Stud Int. Panel	3		N/C
DS16A Steel Stud Int. Panel	1		N/C
DB-91M Spline	4		N/C
BG-91W Plywood Filler	2		N/C
BG-91Q Gypsum Filler	2		N/C
Metal Corner Beads	2		N/C

Note: Replacing panels with warped studs (#389)

Received
May 23 '62 Batch No. 15
Data Processing
Center

(No Distribution)

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 511

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-31-62	16251	944	No Charge	94253		5-24-62

F. O. B.
S/W next house

Description	Quan. Shipped	Unit Price	Invoice Amount
Note: Panel for #389			
DS24A Interior Panel—Steel Stud	1		N/C
DS-91N Splines	3		N/C

Note: To replace panels in above home which would not line up.

Received
Jun 1 '62 Batch No. 21
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 629

(USS) **United States Steel Homes**
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
1-30-62	15067	944	Net 30 Days	73701		1-25-62

F.O.B.
M. R. Moreillon Pick-up

Description	Quan. Shipped	Unit Price	Invoice Amount
Insul. Blank Ceil. 2 x 23 x 148	8		N/C
Note: Short in Home # 62516-1			
BD 53P Baseboard Pine Unfin.	325′	.10	32.50
Side Jambs for Steel Folding Doors	40		N/C
Glass lite for English Plank Ext. Door	1	2.02	2.02
Interior wood mould for English plank door lite	1 set	.40	.40
			34.92
Received Jan 31 '62 Batch No. 18 Data Processing Center	3% Kentucky Tax Applies		1.05
	NET AMOUNT DUE		35.97

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	35.97	C	0.52.01.01-1	619979	Cr.	34.92
				O	0.30.01.08-0	619979	Cr.	1.05
				P				
				Y				

(No Distribution)

DOCUMENT 387.

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-28-61	14579	944	No Charge	73405		11-17-61

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
BD-53 D 1 x 6″ Nu-lock—Primed	350′		N/C

Note: Error in Shipping Order on the following houses: # 62406-1, 62409-1, 62254-1, 62866-1, 62330-1

Nov 20 1961 Batch No. 20
Received
T. A. B.

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 423

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
10-16-61	14078	944	Net 30 Days	73189		10-10-61

F. O. B.
S/W #62330-1

Description	Quan. Shipped	Unit Price	Invoice Amount
BE20E Win. 6 x 5 Eng.	1	81.03	81.03
EF33A Win. 4 x 4 Eng.	2	59.71	119.42
AN54AQ Door Ext. Eng.	1	76.13	76.13
S/E 4′ Eng.	2	1.69	3.38
			279.96
3% Kentucky Tax Applies			8.40
NET AMOUNT DUE			288.36

Received
Oct 16 '61 Batch No. 10
Data Processing
Center

Subject to Credit on A.R.M. 9930.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	288.36	C	0.52.01.01-1	619979	Cr.	279.96
				O	0.30.01.08-0	619979	Cr.	8.40
				P				
				Y				

(No Distribution)

DOCUMENT 451

(USS) United States Steel Homes Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
8-11-61	13322	944	No Charge	72771		8-4-61

F. O. B.
Pick Up by M. R. Moreillon

Description	Quan. Shipped	Unit Price	Invoice Amount
Threshold Supports	2		N/C
Note: Short on 61819-1			
80′ BD-53A 5½″ Fascia	80′		N/C
Note: Package contained 3½″ Fascia on 61819-1			

Received
Aug 11 1961 Batch No. 8
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 410

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
10-9-61	13988	944	Net 30 Days	73144		10-4-61

F. O. B.
S/W #62251-1

Description	Quan. Shipped	Unit Price	Invoice Amount
#1324 Double Bowl Sink	1	12.37	12.37
3% Kentucky Tax Applies			.37
NET AMOUNT DUE			12.74

Note:. Sink has Bubble in porcelain—return for vendor inspection (Reg. Home #61819-1)

Received
Oct 10 '61 Batch No. 4
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	12.74	C	0.52.01.01-1	619979	Cr.	12.37
				O	0.30.01.08-0	619979	Cr.	.37
				P				
				Y				

(No Distribution)

DOCUMENT 376

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
12-6-61	14663	944	Net 30 Days	73476		12-1-61

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
DB-32A Interior Panels	5	8.60	43.00
3% Kentucky Tax Applies			1.29
NET AMOUNT DUE			44.29

For Lots 185, 176, 202, 187 & 209
Note: Orders required above in place of 28A

Subject to Credit on A.R.M. 9979.

Received
Dec 7 1961 Batch No. 2
T. A. B.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	44.29	C	0.52.01.01-1	619979	Cr.	43.00
				O	0.30.01.08-0	619979	Cr.	1.29
				P				
				Y				

(No Distribution)

DOCUMENT 612

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
3-5-62	15339	944-6	Net 30 Days	73802		3-2-62

F. O. B.
S/W #62610-1

Description	Quan. Shipped	Unit Price	Invoice Amount
EF-768 Top 24" White	2	12.14	24.28
3% Kentucky Tax Applies			.73
NET AMOUNT DUE			25.01

Note: For #186 and #187—Dealer request.

Received
Mar 16 '62 Batch No. 12
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	25.01	C	0.52.01.01-1	619979	Cr.	24.28
				O	0.30.01.08-0	619979	Cr.	.73
				P				
				Y				

(No Distribution)

DOCUMENT 370

(USS) United States Steel Homes Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
12-22-61	14832	944	Net 30 Days	73566		12-18-61

F. O. B.
Pick by Moreillon

Description	Quan. Shipped	Unit Price	Invoice Amount
4' English Snap-on Trim	8 sets	1.67	13.36
3% Kentucky Tax Applies			.40
NET AMOUNT			13.76

Note: For #186, 202, 209, 391

Subject to Credit on A.R.M. 9996

Received
Dec 22 1961 Batch No. 15
T. A. B.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	13.76	C O P Y	0.52.01.01-1	619979	Cr.	13.36
					0.30.01.08-0	619979	Cr.	.40

(No Distribution)

DOCUMENT 615

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
2-20-62	15229	944	No Charge	73770		2-15-62

F. O. B.
S/W #62633-1

Description	Quan. Shipped	Unit Price	Invoice Amount
Birch Wall Cabinet W-2430 #324L	1		N/C
#236 Birch Wall Cab. W-3620	1		N/C

Note: For #195 (#62576-1) Dealer reported as short in package. Also report average of (1) 12″ Base Cabinet on Home #62515-1. Order called for (2) 12″ Base—received (3).

ARM to be written for return.

Received
Feb 20 '62 Batch No. 12
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 595

(USS) **United States Steel Homes Division of United States Steel Corporation**

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
4-17-62	15684	6-944	Net 30 Days	73981		4-9-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
2′ Window Screens	1	2.54	2.54
2′ Window Screens	1		N/C
Note: (Above received damaged—delivered by M. R. Moreillon)			
BF-76S Top 60 ES DBCO LH White	1	22.66	22.66
			25.20
3% Kentucky Tax Applies			.76
NET AMOUNT DUE			25.96

Note: RH Sink top received on S.O. 62577-1.
Subject to Credit on A.R.M. 10064.

Received
Apr 18 '62 Batch No. 10
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	25.96	C	0.52.01.01-1	619979	Cr.	25.20
				O	0.30.01.08-0	619979	Cr.	.76
				P				
				Y				

(No Distribution)

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 409

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #80
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
10-10-61	13997	944	Net 30 Days	73172		10-6-61

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
For #80 62251-1			
AZ-44H Win. 4 Eng, 2-Face INS	2	53.73	107.46
AW-54Q Door Ext. ENG PNL LH	1	77.00	77.00
BE-20D, Win. 6 x 5 ENG DIA FIXD	1	81.04	81.04
Trim Snap-on ENG Stl. Win.	2	1.62	3.24
			268.74
3% Kentucky Tax Applies			8.06
NET AMOUNT DUE			276.80

Subject to Credit on A.R.M. 9926.

Received
Oct 11 '61 Batch No. 5
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	276.80	C	0.52.01.01-1	619979	Cr.	268.74
				O	0.30.01.08-0	619979	Cr.	8.06
				P				
				Y				

(No Distribution)

DOCUMENT 570

(USS) United States Steel Homes Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-29-62	16230	6-944	Net 30 Days	74089		5-24-62

F. O. B.
S/W #63058-1

Description	Quan. Shipped	Unit Price	Invoice Amount
4′ Window Screens Awning	9	2.92	26.28
3% Kentucky Tax Applies			.79
NET AMOUNT DUE			27.07

Subject to Credit on A.R.M. 10082.

Received
May 31 '62 Batch No. 20
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	27.07	C	0.52.01.01-1	619979	Cr.	26.28
				O	0.30.01.08-0	619979	Cr.	.79
				P				
				Y				

(No Distribution)

DOCUMENT 596

(USS) **United States Steel Homes Division of United States Steel Corporation**

REMIT TO
United States Steel Homes Division
of
2549 Charlestown Road
United States Steel Corporation
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
4-17-62	15685	6-944	Net 30 Days	73985		4-9-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
3-lite RH Exterior Door AT-60D	1	20.57	20.57
A3-44J2 4′ Window S/H	1	41.14	41.14
(Above for Home Show House ES-1)			
Threshold 35″	1		N/C
(Above two items short on #62673-1)			
			61.71
3% Kentucky Tax Applies			1.85
NET AMOUNT DUE			63.56

Received
Apr 18 '62 Batch No. 10
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	63.56	C	0.52.01.01-1	619979	Cr.	61.71
				O	0.30.01.08-0	619979	Cr.	1.85
				P				
				Y				

(No Distribution)

DOCUMENT 585

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-22-62	16157	944	No Charge	74150		5-16-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
Ext. Door Side Jambs BE-89A	2		N/C
Jamb Steps BE-89P	2		N/C

Note: To correct wrong hand exterior door for
Reg. Home #62673-1—#83

Received
May 23 '62 Batch No. 15
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 475

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
7-25-61	13095	944	N/C	72665		7-20-61

F.O.B.
Delivered by Mr. Moreillon

Description	Quan. Shipped	Unit Price	Invoice Amount
2C Top 60 ES DBCO LH Flame	1		N/C

Note: Delaminated at back between back splash and sink rim. Home 61613-1 (Lot 50)
Manufacturing Responsibility.

Received
Jul 26 '61 Batch No. 13
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 785

UNITED STATES STEEL HOMES
DIVISION
United States Steel (USS) Corporation
New Albany, Indiana

Plant No. 1
Order Date 5-28-62
Customer Ref ely
Terms: No Charge

Invoice Date_____
M.S.O. No. 74280
Customer No. 944

MISCELLANEOUS SALES ORDER

SOLD TO
Fortner Enterprises, Inc
4123 South Third Street
Louisville, Kentucky

SHIP TO

Routing: Our Delivery

Description	Code	Quantity	Unit Price	Total Price
For Lot #50 (Shipped 4-21-61)				
RH Steel Fold Door—(Non Louvered—1961)	601-12-4002	1		N/C

Note: Hinge welds broken—Vendor Responsibility.
ARM—Miles—Cook
(Not legible—Shorthand)

(s) E. L. Agers, Jr./ely

DOCUMENT 553

(USS) United States Steel Homes Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-20-62	16476	944	No Charge	74280		6-13-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
For Lot #50 Rh Steel Fold Door	1		N/C

Note: Hinge welds broken

Received
Jun 21 '62 Batch No. 11
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 523

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
3-14-61	N 11392	944	No Charge	72252		3-7-61

F. O. B.
Pick Up by Moreillon

Description	Quan. Shipped	Unit Price	Invoice Amount
BE62A Header Steel Closet Door 24″	2		N/C
BE62B Header Steel Closet Door 36″	5		N/C
BE62C Header Steel Closet Door 48″	1		N/C

Short shipment on registered homes #61240

Received
Mar 21 1961 Batch No 2
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 582

(USS) **United States Steel Homes Division of United States Steel Corporation**

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-22-62	16147	944	No Charge	74151		5-16-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
For Lot #66:			
2C Top 60 ES DECO LH	1		N/C
5B Top 66 DECO RH	1		N/C
Replace with White/Gold—Delaminated in DPO #66, Reg. Home #61731-1.			
For DPO #20:			
1A Top 24"	1		N/C
2C Top 60 ES DECO LH	1		N/C
20A Bar Top 36¾ LH	1		N/C
Replace with White/Gold—Delaminated in DPO #6-20, Reg. Home #61240-1.			

Received
May 23 '62 Batch No. 15
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 555

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises
7123 South Third Street
Louisville, Kentucky

SHIP TO

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-20-62	16478	944	No Charge	74346		6-13-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
5B Top 66 MRCO LH	1		N/C
Replace with post-formed White/Gold			
Note: To be used to make complete top exchange in DPO #20, Reg. Home #61240-1. For delamination—partial shipment made on MSO 74151.			

Received
Jun 21 '62 Batch No. 11
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 583

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-22-62	16148	944	No Charge	74192		5-16-62

F.O.B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
For DFO #19:			
1A Top 24"	1		N/C
2C Top ES DBCO LH	1		N/C

Note: Replace with post-formed White/Gold. Delaminated on #61241-F.

Received
May 23 '62 Batch No. 15
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 645

UNITED STATES STEEL HOMES
DIVISION
United States Steel (USS) Corporation
New Albany, Indiana

Plant No. 1
Order Date 8-15-61
Customer Ref eld
Terms: Net 30 Days

Invoice Date √ √
M.S.O. No. 72815
Customer No. 944

MISCELLANEOUS SALES ORDER

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Same

Routing: Best Way

Description	Code	Quantity	Unit Price	Total Price
2C Top 60" ES DBCO—Gray	437-06-2011	1	30.29	30.29
Note: Above delaminated on #61731-1. Credit on return of defective Top.				
2C Top 60" ES DBCO—Pink	437-06-3011	1	30.29	30.29
Note: Above delaminated on #61818-1. Credit on return of defective Top.				60.58

Subject to Credit Upon Return of Material to Our Plant Under Terms and Conditions Provided in Authorization No. 9868.

(s) E. P. Akers, Jr./eld

DOCUMENT 559

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises
4123 South Third Street
Louisville, Kentucky

SHIP TO

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-26-62	16560	944	No Charge	74407		6-20-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
Steel Snap On Win. Trim Pkg.	6		N/C
BH16AW Wood Sill 69⅜"	6		N/C
Steel Snap on Win. Trim	3		N/C
BH16AW Wood Sill 48"	3		N/C
DD53P Baseboard	310'		N/C
IA 24" Top White	1		N/C
Replace with post form—delaminated on #52.			
For Lot #63			
2C Top 60 ES DBCO LH	1		N/C
5B Top 66 MRCO RH	1		N/C
Replace with post form—Delaminated on #61827-1.			

Received
Jun 26 '62 Batch No. 15
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 562

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises
4123 South Third Street
Louisville, Kentucky

SHIP TO

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-29-62	16656	944	No Charge	74451		6-28-62

F. O. B.
Best Way

Description	Quan. Shipped	Unit Price	Invoice Amount
1A Top	1		N/C
2D Top 60 ES DBCO RH	1		N/C

For Lot #51, Reg. Home #61729-1. Sink top delaminated—replace with White/Gold post-formed.

Received
Jul 2 '62 Batch No. 18
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 454

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2542 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
8-18-61	13386	944	Net 30 Days	72815		8-15-61

F.O.B.
Best Way

Description	Quan. Shipped	Unit Price	Invoice Amount
2C Top 60" ES DBCO—Gray	1	30.29	30.29
Note: Above delaminated on #6173101— Credit on return of defective Top.			
2C Top 60" ES DBCO—Pink	1	30.29	30.29
			60.58
3% Kentucky Tax Applies			1.82
NET AMOUNT DUE			62.40

Subject to Credit on A.R.M. 9868.

Received
Aug 18 '61 Batch No. 13
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	62.40	C	0.52.01.01-1	619979	Cr.	60.58
				O	0.30.01.08-0	619979	Cr.	1.82
				P				
				Y				

(No Distribution)

DOCUMENT 594

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer to This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
4-17-62	15683	6-944	No Charge	73959		4-9-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
2C Top 60 ES DBCO LH Gray	1		N/C

Note: Replace with Nov-a-ply—replacing delaminated top in Lot 66, Reg. Home #61731-1.

Received
Apr 18 '62 Batch No. 10
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

COPY FURNISHED PRINTER WAS NOT
LEGIBLE FOR REPRODUCTION

DOCUMENT 554

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-20-62	16477	944	No Charge	74326		6-13-62

F. O. B.
New Albany, Indiana—Prepaid

Description	Quan. Shipped	Unit Price	Invoice Amount
Our Delivery			
For Lot #57:			
#1B Top 15"	1		N/C
48 Top 16 ES-LH	1		N/C
M1 Top 60 DRCO	1		N/C
Note: Replace above with post-formed Aqua #80M83 Replacing delamination in Reg. Home #61222-1.			
For Lot #363:			
11A Top 60 DECO	1		N/C
3J Top 79 ES MRCO LH	1		N/C
Note: Replace with post-formed White/Gold #89M79 Delaminated in Reg. Home #61714-1.			

Received
Jun 21 '62 Batch No. 11
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 485

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-30-61	12862	944	No Charge	72582		6-28-61

F.O.B.
S/w 61901-1

Description	Quan. Shipped	Unit Price	Invoice Amount
IT 19 CR Roof Sheathing 3/8	6	N/C	N/C

Received
Jul 3 '61 Batch No. 20
Data Processing
Center

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 572

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-31-62	16250	944	No Charge	74138		5-24-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
13B Top 92 x 83 ES DBMR RH	1		N/C

Note; Replace with post-formed White/gold
(Delaminated on DPO #59 Reg. Home #61901-1)

Received
Jun 1 '62 Batch No. 21
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 516

(USS) **United States Steel Homes Division of United States Steel Corporation**

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord No.	Customer Ord. No.	Shipping Date
5-10-61	12076	944	No Charge	72224		5-1-61

F. O. B.
Picked up by M. R. Moreillon

Description	Quan. Shipped	Unit Price	Invoice Amount
Caulking Compound	10		N/C

Note: Not received with 61223-1

Received
May 10 1961 Batch No. 5
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 464

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows, Lot #319
Valley Station, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
8-29-61	13512	944	Net 30 Days	72840		8-25-61

F. O. B.
S/W #62180-1

Description	Quan. Shipped	Unit Price	Invoice Amount
13B Top 92 x 83 ES DBMR RH Grey	1	70.39	70.39
3% Kentucky Tax Applies			2.11
NET AMOUNT DUE			72.50

To replace delaminated top in
Home #61713-1 per M. R. Moreillon.
Subject to Credit on A.R.M. 9870.

Received
Aug 30 '61 Batch No. 21
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	72.50	C	0.52.01.01-1	619979	Cr.	70.39
				O	0.30.01.08-0	619979	Cr.	2.11
				P				
				Y				

(No Distribution)

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 584

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-22-62	16156	944	No Charge	74137		5-16-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
For DPO #319 Reg. Home #61713-1, Robert Crowley:			
13B Top 92 x 83 ES DBMR RH Gray	1		N/C
Replace with Nov-A-Ply (Delaminated)			
LE Col. Door &E-60G	1		N/C
Replacing door with hinges off set causing door to bind and warp.			
Exterior Door Jamb Material (See Below):			
Header BE-89C	1		
Sides BE-89A	2		
Jamb Stops BE-39P	2		
Head Stops BE-89M	2		
RH Jamb Trim BE-89U	1		
LH Jamb Trim BE-89T	1		
Header Jamb Trim BE-89V	1		
Weatherstrip Header ED-54B	1		
Weatherstrip Latch Side–Top BD54C	1		
Weatherstrip Latch Side—Bottom ED 54D	1		
Weatherstrip Hinge Side Top DD 54G	1		
Weatherstrip Hinge Side Bottom ED 54J	1		
Weatherstrip Center Section BD 54H	2		
(No Distribution)			

Received
May 23 '62 Batch No. 15
Data Processing
Center

DOCUMENT 557

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, ~~Inc.~~
4123 South Third Street
Louisville, Kentucky

SHIP TO

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-26-62	16558	944	No Charge	74361		6-20-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
For #319:			
LH AT-60Q Ext. French Dec. Door	1	C	N/C
13B Top 92 x 83 ES-DBMR RH	1		N/C

Item I: Door received on MEO 74123 has "wash" cut in top side.
Item II: Replacing old style top shipped on MEO 74123—Delaminated on #319.

Received
Jun 26 '62 Batch No. 15
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 446

United States Steel Homes.
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
9-29-61	13937	944	Net 30 Days	73139		9-29-61

F. O. B.
Best Way

Description	Quan. Shipped	Unit Price	Invoice Amount
2C Top 60 ES DECO LH GR	1	30.29	30.29
3% Kentucky Tax			.91
NET AMOUNT DUE			31.20

Note: Delaminated top on #61980-1.
Credit dealer on return.
Subject to Credit on ARM 9919.

Received
Oct 3 '61 Batch No. 21
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	31.20	C	0.52.01.01-1	619979	Cr.	30.29
				O	0.30.01.08-0	619979	Cr.	.91
				P				
				Y				

(No Distribution)

DOCUMENT 560

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-26-62	16561	6-944	Net 30 Days	74408		6-20-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
Faucet Assemblies Delta 400	3 sets	14.49	43.47
2C Top 60 ES DBCO LM Aqua	1		N/C
5B Top 66 MRCO RH Aqua	1		N/C
3% Kentucky Tax Applies			1.30
NET AMOUNT DUE			44.77

Note: Delamination on #61980-1.

Received
Jun 26 '62 Batch No. 15
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	44.77	C	0.52.01.01-1	619979	Cr.	43.47
				O	0.30.01.08-0	619979	Cr.	1.30
				P				
				Y				

(No Distribution)

DOCUMENT 517

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Same

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
4-28-61	N 11952	944	No Charge	72199		4-25-61

F. O. B.
Pick-Up

Description	Quan. Shipped	Unit Price	Invoice Amount
Light Fixture SL-282	1		N/C

Note: Short on 6122-41

Received
May 1 1961 Batch No: 5
Data Processing
Center

(No Distribution)

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 477

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Ky.

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
7/25/61	13071	944	Net 30 Days	72677		7/20/61

F.O.B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
BE-62A Header	4	.90	3.60
BE-62B Header	20	1.08	21.60
BE-68C Header	4	1.22	4.88
BE-62D Header	4	1.38	5.52
AZ-83BE Sheathing	8	N/C	N/C
AZ-83KD Sheathing	1	N/C	N/C
AZ-83RD Sheathing	4	N/C	N/C
AZ-83D Sheathing	4	N/C	N/C
Note: Sheathing shortage created due to proper drawing not being included #61956-1 (Charge Sales Department)			
KW-1018F Nutmeg Filler	1	3.32	3.32
			38.92
Jul 26 '61 Batch No. 13 Data Processing Center	3% Kentucky Tax Applies		1.17
	NET AMOUNT DUE		40.09

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	00.00.0.9	Dr.	40.09	C	0.52.01.01-1	619979	Cr.	38.92
				O	0.30.01.08-0	619979	Cr.	1.17
				P				
				Y				

(No Distribution)

DOCUMENT 428

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
9-15-61	13690	944	Net 30 Days	72942		9-7-61

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
#501 Med. Cabinet	2	5.23	10.46
Molly Bolts 4 S	200	.07	14.00
Snap on Trim for 2" Beacon	2 sets	1.29	2.58
5B Top 66" MRCO RH White	1	29.25	29.25
On #62069-1 dealer received 5A LH Top. Credit on return.			56.29
3' Steel Fold Closet Door LH Note: Damaged on last two houses.	2		N/C
Received Sept 18 '61 Batch No. 9 Data Processing Center	3% Kentucky Tax Applies NET AMOUNT DUE		1.69 57.98

Subject to Credit on A.R.M. 9891.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	57.98	C	0.52.01.01-1	619979	Cr.	56.29
				O	0.30.01.08-0	619979	Cr.	1.69
				P				
				Y				

(No Distribution)

DOCUMENT 563

(USS) **United States Steel Homes Division of United States Steel Corporation**

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-29-62	16653	6-944	Net 30 Days	74427		6-29-62

F. O. B.
Best Way

Description	Quan. Shipped	Unit Price	Invoice Amount
BE53P Baseboard (Accumulated Shortages.) For Lot #60, Reg. Home #62069-1	36′		N/C
14 x 57 Shutters	1 pr.	8.02	8.02
	3% Kentucky Tax Applies		.24
	NET AMOUNT DUE		8.26

Subject to Credit on A.R.M. 10147.

Received
Jul 2 '62 Batch No. 13
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	8.26	C	0.52.01.01-1	619979	Cr.	8.02
				O	0.30.01.08-0	619979	Cr.	.24
				P				
				Y				

(No Distribution)

DOCUMENT 746

UNITED STATES STEEL HOMES
DIVISION
United States Steel (USS) Corporation
New Albany, Indiana

Plant No. 1 — Invoice Date √
Order Date 9-25-61 — M.S.O. No. 73077
Customer Ref eld
Terms: Net 30 Days — Customer No. 944

MISCELLANEOUS SALES ORDER

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Same

Routing: Ship w/Home on 9-25-61 Collect ☒

Description	Code	Quantity	Unit Price	Total Price
For Lot 710				
AZ-39AE Trim	434-43-0427	60 Spco	.15	9.00
1" x 6" Nuloc	434-16-1020	30	.17	5.10
N/C				
(Not legible)—on MSO 73077				
For Lot #61				
20' 1⅛ x 6" Fascia BD-53A	601-11-1020	20'	.31	6.20
Gutterboard AZ-39T	401-48-1030	20'	.16	3.20
BD-53B Plain Mould	601-11-1040	20	.07	1.40
				24.90
			3%	.75
				25.65

(s) E. L. Akers, Jr/eld

DOCUMENT 439

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
9-28-61	13879	944	Net 30 Days	73091		9-26-61

F. O. B.
Pick up by M. R. Moreillon

Description	Quan. Shipped	Unit Price	Invoice Amount
Fade Sheets only (for BE-03A Cable Offset Filler)			N/C
Note: Dealer received RH on #62255-1			
2 sets Snap on Trim (for 4' English Window)	2 sets		N/C
Note: Not included in #62255-1			
KB-1534 E Base Nutmeg	1	38.62	38.62
3% Kentucky Tax Applies			1.15
NET AMOUNT DUE			39.77

Received
Sep 29 '61 Batch No. 18
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	39.77	C	0.52.01.01-1	619979	Cr.	38.62
				O	0.30.01.08-0	619979	Cr.	1.15
				P				
				Y				

(No Distribution)

DOCUMENT 681

UNITED STATES STEEL HOMES
DIVISION
United States Steel (USS) Corporation
New Albany, Indiana

Plant No. 1
Order Date 12-30-61
Customer Ref eld
Terms: Net 30 Days

Invoice Date
M.S.O. No. 73287
Customer No. 944

MISCELLANEOUS SALES ORDER

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Same

Routing: Deliver by M. R. Moreillon Collect ☒

Description	Code	Quantity	Unit Price	Total Price
BF-76AB White	438-09-0022	1	25.21	25.21
BF-76G White	438-03-0010	1	12.14	12.14
5B Gray Top	437-08-2012	1	30.43	30.43
				67.78
Note: For #710 (62255-1)			3% Tax	2.03
				69.81

ARM to return for credit if in good condition: (1) BF-76Z
(1) BF76K
(1) 3D

Reason: Dealer building house differently than plan supplied.

Subject to Credit Upon Return of Material to Our Plant Under Terms and Conditions Provided in Authorization No. 9953.

(s) E. L. Akers, Jr./eld

DOCUMENT 565

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-29-62	16655	944	No Charge	74469		6-29-62

F. O. B.
Fastest Way

Description	Quan. Shipped	Unit Price	Invoice Amount
BF-76DA Bar Top 36¾ LH White/Gold	1		N/C

Note: Reg. Home #62210-1 has delaminated top replaced w/post formed—above to complete kitchen with post form.

Received
Jul 2 '62 Batch No. 18
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 443

(USS) United States Steel Homes Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
9-29-61	13944	944	No Charge	73111		9-27-61

F. O. B.
Deliver Our Truck

Description	Quan. Shipped	Unit Price	Invoice Amount
BD-53D 1 x 6 Nulee	70'		N/C

Note: Error in S. O. on #62250-1.

Received
Oct 3 '61 Batch No. 21
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 526

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
3-7-61	N 11325	944	No Charge	71981		

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
BD-28B Jack Assembly	3		N/C
AZ-41A Truss to Panel Clips	40		N/C

Notes: Shortage on Registered Home 61221-1

Received
Mar 10 1961 Batch No. 1
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 734

UNITED STATES STEEL HOMES
DIVISION
United States Steel (USS) Corporation
New Albany, Indiana

Plant No. 1
Order Date 3-28-61
Customer Ref eld
Terms: No Charge

Invoice Date_____
M.S.O. No. 72070
Customer No. 944

MISCELLANEOUS SALES ORDER

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO

Routing: Pick up by M. R. Moreillon

Description	Code	Quantity	Unit Price	Total Price
RH Side Rails (For steel Fold Doors)		7	N/C	N/C
LH Side Rails (For Steel Fold Doors)		7	N/C	N/C

Note: Not in door packages for Register Home #61221-1.

(Cancelled)

(s) E. L. Akers, Jr./eld

DOCUMENT 573

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-31-62	16249	944	No Charge	74139		5-24-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
10B Top 92 x 41 ES DBCO RH	1		N/C

Replace with post-formed White/Gold
(Delaminated on #61221-1).

Received
Jun 1 '62 Batch No. 21
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 613

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
3-5-62	15341	944-6	Net 30 Days	73791		3-2-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
S/W #62610-1			
36" RH Vanity GRV-36R	1	67.09	67.09
2C Top 60" ES DBCO LH Pink	1		N/C*
3D Top 67 ES MRCO RH Pink	1	33.83	33.88
			100.92
		3% Kentucky Tax Applies	3.03
Received			
Mar 16 '62 Batch No. 12		NET AMOUNT DUE	103.95
Data Processing Center			

Note: *To replace delaminated top in #61028-1 (#27)

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	103.95	C	0.52.01.01-1	619979	Cr.	100.92
				O	0.30.01.08-0	619979	Cr.	3.03
				P				
				Y				

(No Distribution)

DOCUMENT 561

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-26-62	16562	6-944	Net 30 Days	74368		6-20-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
5A Top 66 MRCO LH Gray	1	30.43	30.43
3% Kentucky Tax Applies			.91
			31.34

Note: For Reg. Home #60999-1, DPO #5-26.

Received
Jun 26 '62 Batch No. 15
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	31.34	C	0.52.01.01-1	619979	Cr.	30.43
				O	0.30.01.08-0	619979	Cr.	.91
				P				
				Y				

(No Distribution)

DOCUMENT 821

UNITED STATES STEEL HOMES
DIVISION
United States Steel (USS) Corporation
New Albany, Indiana

Plant No. 1
Order Date 3-22-62
Customer Ref ely
Terms: Net 30 Days

Invoice Date_____
M.S.O. No. 73921
Customer No. 944

MISCELLANEOUS SALES ORDER

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO

Routing: Pick Up by Moreillon

Description	Code	Quantity	Unit Price	Total Price
W4220 Cab. Wall Birch	701-20-3080	1	20.27	20.27
			3% Tax	.61
				20.88

Memo Charge. Cabinet has ¼" bow in top center, #62680-1. Credit dealer on return.

(Cancel)

Subject to Credit Upon Return of Material to Our Plant Under Terms and Conditions Provided in Authorization No. 10052.

(s) E. L. Akers, Jr./eld

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 638

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Same

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
12-14-60	N 10485	944	N/C	71589		12-5-60

F. O. B.
Deliver to—our truck

Description	Quan. Shipped	Unit Price	Invoice Amount
BD-19AG Sheathing	6		N/C

Note: On 61000-1 long dimension of above was approximately 10″ short in size.

Received
Dec 19 1960 Batch No. 2
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 377

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
12-28-61	14872	944	No Charge	73498		12-8-61

F.O.B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
Pick up by Mr. Moreillon			
BF 76S Top 60 ESDB LH White	1		N/C
BF 76AF Top 67 ES MR RH White	1		N/C

Note: To replace tops shipped with Home #62329-1 (Lot #48) with bowed backsplash—cannot fit to wall.

Received
Dec 28 1961 Batch No. 18
T. A. B.

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 389

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-29-61	14590	944	No Charge	73447		

F. O. B.
To be Shipped Direct from Vender

Description	Quan. Shipped	Unit Price	Invoice Amount
3' Top & Bottom tracks for 1962 Steel Fold Doors	4 sets		N/C

Note: Not in door package on #62331-1

Received
Nov 30 1961 Batch No. 21
T. A. B.

(No Distribution)

DOCUMENT 605

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO	SHIP TO
Fortner Enterprises, Inc. 4123 South Third Street Louisville, Kentucky	Fortner Enterprises, Inc. Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
3-19-62	15429	944-6	No Charge	73864		3-12-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
DB 48A Interior Panel	1		N/C
DB-48B Interior Panel	1		N/C

Reference #62633-1 (#78) excessive warpage.
Driver making delivery to pick up warped panels for return to USSW.

Received
Mar 20 '62 Batch No. 11
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 391

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-6-61	14339	944	Net 30 Days	73397		11-3-61

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
Deliver by A. B. Harris			
AT-60D Ext. 3-lite Door RH	1	20.57	20.57
3% Kentucky Tax Applies			.62
NET AMOUNT DUE			21.19

Note: Credit dealer on return of 5-lite RH.
Order #62367-1.

Received
Nov 9 1961 Batch No. 8
T. A. B.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	21.19	C	0.52.01.01-1	619979	Cr.	20.57
				O	0.30.01.08-0	619979	Cr.	.62
				P				

(No Distribution)

DOCUMENT 627

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
2549 Charlestown Road
United States Steel Corporation
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
1-31-62	15090	944	No Charge	73707		1-26-62

F. O. B.
Pick Up by M. R. Moreillon

Description	Quan. Shipped	Unit Price	Invoice Amount
Light Fixture Dining SL 979	2		N/C
Light Fixture–Pull Chain	4		N/C
Light Fixture SL-123 Bedroom	6		N/C
Light Fixture SL-324 Hall	2		N/C
Light Fixture SL-421 Kitchen	2		N/C

Note: For Reg. Homes #62367 & #62392.
Note included on shipping order.

Received
Feb 1 '62 Batch No. 19
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 388

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-28-61	14578	944	No Charge	73426		11-17-61

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
Gyp ½ x 4 x 8	12 pcs.		N/C
Note: Short on Plan #710			

Received
Nov 29 1961 Batch No. 20
T. A. B.

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 390

United States Steel Homes
(US$) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-28-61	14584	944	No Charge	73453		11-24-61

F. O. B.
Deliver by M. R. Moreillon

Description	Quan. Shipped	Unit Price	Invoice Amount
DB 32A Interior Panel	1		N/C

Note: Panel error on attachment

Received
Nov 29 1961 Batch No. 20
T. A. B.

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 393

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-6-61	14341	944	Net 30 Days	73256		11-2-61

F. O. B.
Held for M. R. Moreillon Pick-up

Description	Quan. Shipped	Unit Price	Invoice Amount
BF-76G Top White 24, No end splash	1	12.14	12.14
3% Kentucky Tax Applies			.35
NET AMOUNT DUE			12.50

Received
Nov 9 1961 Batch No. 8
T. A. B.

Subject to Credit on A.R.M. 9947

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	12.50	C	0.52.01.01-1	619979	Cr.	12.14
				O	0.30.01.08-0	619979	Cr.	.36
				P				
				Y				

(No Distribution)

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 405

(USS) **United States Steel Homes**
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
11-17-61	14465	944	No Charge	73393		11-15-61

F. O. B.
Pick Up by M. R. Moreillon

Description	Quan. Shipped	Unit Price	Invoice Amount
Gyp Partition Edge Filler	34		N/C
Short in Plan #710			
Gyp Drywall Nails 1¼"	10 lb.		N/C
Accumulated shortage Plan #710			

Received
Nov 22 1961 Batch No. 13
T. A. B.

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 408

(USS) United States Steel Homes Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
10-10-61	14007	944	Net 30 Days	73161		10-5-61

F. O. B.
Dealer Pick-up

Description	Quan. Shipped	Unit Price	Invoice Amount
11A Top 60 DBCO White	1	27.81	27.81
1B Top 15" White	1	10.24	10.24
EB-1534AL Cab. Base Nutmeg	1	30.29	30.29
			68.34
		3% Kentucky Tax Applies	2.05
		NET AMOUNT DUE	70.39

Received
Oct 11 '61 Batch No. 5
Data Processing
Center

Subject to Credit on A.R.M. 9923

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	70.39	C	0.52.01.01-1	619979	Cr.	68.34
				O	0.30.01.08-0	619979	Cr.	2.05
				P				
				Y				

(No Distribution)

DOCUMENT 427

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Golden Meadows
Valley Station, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
9-12-61	13660	944	No Charge	72954		9-6-61

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
AT50E Sill Anchor	2		N/C

Erection plans shipped with House B-12, House B-11.

Received
Sept 13 1961 Batch No. 6
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 432

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
9-25-61	13814	944	No Charge	73049		9-22-61

F. O. B.
Shipped Direct from Vendor

Description	Quan. Shipped	Unit Price	Invoice Amount
Top track for 2′ Fold Door—Steel	1		N/C
Note: Not in door package.			

Received
Sep 26 '61 Batch No. 15
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 444

(USS) **United States Steel Homes**
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
9-29-61	13918	944	Net 30 Days	73102		9-27-61

F. O. B.
Best Way

Description	Quan. Shipped	Unit Price	Invoice Amount
1" x 6" Nuloe	30	.17	5.10
Caulking Compound	10	.30	3.80
			8.90
3% Kentucky Tax Applies			.27
NET AMOUNT DUE			9.17

Received
Oct 3 '61 Batch No. 21
Data Processing
Center

Note: Not included in shipment on MSO 73077.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	9.17	C	0.52.01.01-1	619979	Cr.	8.90
				O	0.30.01.08-0	619979	Cr.	.27
				P				
				Y				

(No Distribution)

DOCUMENT 452

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
8-14-61	13341	944	No Charge	72793		8-11-61

F. O. B.
Best Ways

Description	Quan. Shipped	Unit Price	Invoice Amount
Diamond Glass Pane for Fixed Section	1		N/C
Note: Charge Qualify Control			

Received
Aug 15 1961 Batch No. 9
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 473

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
7/27/61	13132	944	No Charge	72714		7/25/61

F. O. B.
s/w #61979-1

Description	Quan. Shipped	Unit Price	Invoice Amount
Hardware for Combo. Door	6		N/C

Note: To replace defective Yale storm door latches per P. Crayson-Sales Rep. Purchasing Responsibility.

Received
July 28 '61 Batch No. 15
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 483

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
7-10-61	12931	944	Net 30 Days	72580		7-3-61

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
JM-61V Mark 27 Green	1	166.18	166.18
3% Ky. Tax Applies			4.99
NET AMOUNT DUE			171.17

Note: Dealer has received one pink Mark-27 in place of Green. (Home unknown)

Received
Jul 10 1961 Batch No. 3
Data Processing
Center

Subject to credit on ARM #9820.

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	00-00-0-9	Dr.	171.17	C	0.52.01.01-1	619979	Cr.	166.18
				O	0.30.01.08-0	619979	Cr.	4.99
				P				
				Y				

(No Distribution)

DOCUMENT 490

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-29-61	12750	944	Net 30 Days	72515		

F. O. B.

Description	Quan. Shipped	Unit Price	Invoice Amount
5B Top 66 MRCO RH GR	1		29.25
3% Kentucky Sales Tax Applies			.88
NET AMOUNT DUE			30.13

Subject to credit on ARM 9811
1 5B Top 66 reported received with ES

Received
Jul 1 '61 Batch No. 19
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	.00-00-0-9	Dr.	30.13	C	0.52.01.01-1	619979	Cr.	29.25
				O	0.30.01.08-0	619979	Cr.	.83
				P				
				Y				

(No Distribution)

DOCUMENT 497

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
4123 S. 3rd Street
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6/14/61	12565	944	N/C	72447		6/6/61

F. O. B.

Description	Quan. Shipped	Unit Price	Invoice Amount
BE-18Y Pul. Beam Fil.	1		N/C
Nails Concrete 1 inch	2		N/C
1 x 6 Nu-Loc RL	48		N/C

Items reported short
Miles 6/6/61

Received
June 14 1961 Batch No. 8
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 498

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
4123 S. 3rd Street
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6/20/61	12636	944	Net 30 Days	72496		6/15/61

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
3′ x 8′ Steel Folding Door LH	1	19.95	19.95
3% Kentucky Tax Applies			.60
TOTAL AMOUNT DUE			20.55

Door Received has non-matching hinges and no side rails—Vendor Responsibility.

Subject to credit upon return to our plant of material per ARM #9805.

Received
Jun 21 '61 Batch No. 12
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	20.55	C	0.52.01.01-1	619989	Cr.	19.95
				O	0.30.01.08-0	619989	Cr.	.60
				P				
				Y				

(No Distribution)

DOCUMENT 505

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5/31/61	12401	944	Net 30 Days	72404		5/31/61

F. O. B.
Delivered

Description	Quan. Shipped	Unit Price	Invoice Amount
AJ54D	1	60.88	60.88
Ext. Knob Set AZ10 LF5237/2	1	3.79	3.79
			64.67
3% Kentucky Tax Applies			1.94
TOTAL AMOUNT DUE			66.61

Subject to credit upon return of material to our plant under terms and conditions ARM. #9643.

Received
Jun 2 '61 Batch No. 22
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	66.61	C	0.52.01.01-1	619989	Cr.	64.67
				O	0.30.01.08-0	619989	Cr.	1.94
				P				
				Y				

(No Distribution)

DOCUMENT 525

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Same

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
3-7-61	N 11328	944	No Charge	71995		

F. O. B.
Pick Up by M Moreillon

Description	Quan. Shipped	Unit Price	Invoice Amount
AZ-39T Gutterboard	28′		N/C
BE-31AN Soffitt	1		N/C

Note: Accumulated Shortages

Received
Mar 10 1961 Batch No: 1
Data Processing
Center

(No Distribution)

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 533

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
1-31-61	N 11010	944	Net 30 Days	71814		

F. O. B.
Delivered

Description	Quan. Shipped	Unit Price	Invoice Amount
2C Top 60 ES DRCO LH Gray	1	30.29	30.29
Note: Credit Dealer on return of 2B top received in error on MEO 71731			
BE-62A Header for 2′ Steel Fold Door	1	.90	.90
Griffin Hinges for #730 Storm Doors	3	.46	1.38
Shelf Supports (for G. E. Wall Cabinet)	2		N/C
			32.57
3% Kentucky Sales Tax Applies			.98
NET AMOUNT DUE			33.55

Received
Feb 2 1961 Batch No. 5
Data Processing
Center

Subject to Credit on A.R.M. 9563

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	00-00-0-0	Dr.	33.55	C	0.52.01.01-1	619980	Cr.	32.57
				O	0.30.01.08-0	619980	Cr.	.98
				P				
				Y				

(No Distribution)

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 535

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
1-23-61	N 10900	944	Net 30 Days	71824		1-20-61

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
5B Top 66 MRCO R.H. Gray	1	29.25	29,25
3% Ky. Sales Tax Applies			.88
NET AMOUNT DUE			30.13

Note: Dealer received wrong hand on MEO 71731.

Subject to credit on A.R.M. #9565.

Received
Jan 24 1961 Batch No. 3
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	00-00-0-0	Dr.	30.13	C	0.52.01.01-1	619980	Cr.	29.25
				O	0.30.01.08-0	619980	Cr.	.88
				P				
				Y				

(No Distribution)

DOCUMENT 541

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Same

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
1-11-61	N 10770	944	N/C	71741		1-4-61

F. O. B.
Delivered by our truck

Description	Quan. Shipped	Unit Price	Invoice Amount
Door Steel Folding Plain RH 3 x 8 w/hdwe	1		N/C

Note: To replace concealed damage and hinge-bound door opened and inspected by A. E. Harris, Product Service Representative.

Received
Jan 18 1960 Batch No. 1
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 542

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
4123 S. Third Street
Louisville, Ky.

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
1-11-61	N 10768	944	N/C	71747		1-5-61

F. O. B.
Picked Up

Description	Quan. Shipped	Unit Price	Invoice Amount
14" x 86" Wood Shutters	2 pr.		N/C

Note: A. E. Harris returning 2 pr. 14 x 96"

Received
Jan 18 1960 Batch No. 1
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 566

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
6-29-62	16647	944	No Charge	74471		6-28-62

F. O. B.
Deliver to Mr. Akers

Description	Quan. Shipped	Unit Price	Invoice Amount
BH-16AM Wood Sill 48″	4		N/C
BH-16AN Wood Sill 69⅜	2		N/C

Notes: To complete houses with English windows with std. trim in package.

Received
July 2 '62 Batch No. 18
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 581

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
5-22-62	16146	944	No Charge	74221		5-16-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
Steel Snap-on Pkg. #5 English	8 sets		N/C

Note: Replacing 4' SH Trim shipped in error for 4' English.

Received
May 23 '62 Batch No. 15
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 591

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
4-10-62	15631	6-944	No Charge	73952		4-3-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
3' LH Col. Fold. Doors	2		N/C

Note: The above are replacing two doors still jumping track after repair by Air Control—Doors have warped side rails.

Received
Apr 10 '62 Batch No. 5
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 598

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
4-17-62	15682	6-944	No Charge	73985		4-9-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
DR-AK Wood Sill 45"	28		N/C
BN-16AN Wood Sill 69⅜"	4		N/C

Note: Adjustment for window unevenness.

Received
Apr 18 '62 Batch No. 10
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 599

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
4-26-62	15837	944	No Charge	74065		4-20-62

F. O. B.
Pick up

Description	Quan. Shipped	Unit Price	Invoice Amount
4' Window Screens (Awning 1961)	9		N/C

Note: Replacing 1961 screens that were oversize in thickness.

Received
Apr 27 '62 Batch No. 17
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 601.

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
4-17-62	15681	6-944	No Charge	73964		4-9-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
3' Col. Door RH Steel	1		N/C

Note: On recent exchange of doors per Reigh, wrong hand was shipped—LH door received 4/4/62 on MEO 7380.

Received
Apr 18 '62 Batch No. 10
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT 602

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
4-13-62	15668	6-944	No Charge	73973		4-9-62

F. O. B.
S/W Next House

Description	Quan. Shipped	Unit Price	Invoice Amount
Col. Steel Fold Door Jambs	1 set		N/C

Received
Apr 16 '62 Batch No. 18
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 604

(USS) United States Steel Homes
Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
3-19-62	15430	944-6	No Charge	73865		3-13-62

F. O. B.
Our Delivery

Description	Quan. Shipped	Unit Price	Invoice Amount
Top 66 MR RH Aqua BF-76-AF— No End Splash	1		N/C

Note: On MEO 73769 dealer received BF76Z Top with left hand splash.

Received
Mar 20 '62 Batch No. 14
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 606

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

(USS) United States Steel Homes
Division of
United States Steel Corporation

INVOICE

SOLD TO
Fortner Enterprises
4123 South Third Street
Louisville, Kentucky

SHIP TO

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
3-2-62	15326	944-6	No Charge	73768		

F. O. B.
Shipped Direct from Vendor

Description	Quan. Shipped	Unit Price	Invoice Amount
Connecter Nuts and Washers for #400 Faucets	8		N/C

Received
Mar 16 '62 Batch No. 1
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 608

United States Steel Homes
(USS) Division of
United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
3-30-62	15565	6-944	No Charge	73935		3-26-62

F. O. B.
Picked up by M. Moreillon on 3-24-62

Description	Quan. Shipped	Unit Price	Invoice Amount
LH 3′ Steel Fold Doors	2		N/C
RH 3′ Steel Fold Door	1		N/C

Replacements requested by Mr. Howard of Air Control Products replacing defective doors.

Subject to Credit on A.R.M. 20054.

Received
Mar 30 '62 Batch No. 20
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 632

(USS) United States Steel Homes Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
1-22-62	15009	944	Net 30 Days	73668		

F. O. B.
For M. R. Moreillon Pick Up

Description	Quan. Shipped	Unit Price	Invoice Amount
BE89V Int. Trim Header for Ext. Dr.	4		N/C
BE89T Int. Trim Side Jamb for Ext. Dr. RH	4		N/C
BE85U Int. Trim Side Jamb for Ext. Dr. LH	4		N/C
Door Steel Fold Col. 3' LH	1	16.65	16.65
3% Kentucky Tax Applies			.50
NET AMOUNT DUE			17.15

Received
Jan 22 '62 Batch No. 12
Data Processing
Center

Account No.	Code		Amount		Account No.	Code		Amount
0.15.01.01-0	000009	Dr.	17.15	C	0.52.01.01-1	619979	Cr.	16.65
				O	0.30.01.08-0	619979	Cr.	.50
				P				
				Y				

(No Distribution)

DOCUMENT 637

United States Steel
(USS) HOMES
Division of United States Steel Corporation

REMIT TO
United States Steel Homes Division
of
United States Steel Corporation
525 Wm. Penn Place
Pittsburgh 30, Pennsylvania
Attn: Treasury Dept.

INVOICE

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises
Louisville, Kentucky

Please Refer To This Invoice By Number When Making Payment

Invoice Date	Invoice No.	Customer No.	Terms	Shipping Ord. No.	Customer Ord. No.	Shipping Date
12-29-60	N 10573	944	No Charge	71665		

F. O. B.

Description	Quan. Shipped	Unit Price	Invoice Amount
4' Russo English Window Snap-On Trim	2 sets		N/C

Received
Dec 21 1960 Batch No. 3
Data Processing
Center

Account No.	Code	Amount	Account No.	Code	Amount

(No Distribution)

DOCUMENT 732

UNITED STATES STEEL HOMES

DIVISION

United States Steel (USS) Corporation

New Albany, Indiana

Plant No. 1
Order Date 3-1-61
Customer Ref eld
Terms: No Charge

Invoice Date √
M.S.O. No. 71981
Customer No. 944

MISCELLANEOUS SALES ORDER

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Fortner Enterprises, Inc.
Out Dixies Highway to Valley Station Road, turn left cross R.R. turn right on Deering Rd. and proceed to site.

Routing: Our Delivery

Description	Code	Quantity	Unit Price	Total Price
BD-28R Jack Assembly	435-01-0312	3	N/C	N/C 9.57
AZ-41A Truss to Panel Clips	605-11-5020	40	N/C	N/C 2.40
				11.97

Note: xxxx Order Service Division Responsibility.

(s) E. L. Akers, Jr./eld

DOCUMENT 740

UNITED STATES STEEL HOMES
DIVISION
United States Steel (USS) Corporation
New Albany, Indiana

Plant No. 1
Order Date 6-28-61
Customer Ref fep
Terms: N/C

Invoice Date √
M.S.O. No. 72582
Customer No. 944

MISCELLANEOUS SALES ORDER

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
See Below

Routing: Ship w/house scheduled to load 6-28-61

Description	Code	Quantity	Unit Price	Total Price
BD19C Roof Sheathing 3/8	402-48-5325	6	N/C	N/C

(s) G. W. Rosenberger/fep

DOCUMENT 742

UNITED STATES STEEL HOMES
DIVISION
United States Steel (USS) Corporation
New Albany, Indiana

Plant No. 1
Order Date 7-10-61
Customer Ref eld
Terms: Net 30 Days—No Charge

Invoice Date √
M.S.O. No. 72621
Customer No. 944

MISCELLANEOUS SALES ORDER

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Same

Routing: Our Delivery

Description	Code	Quantity	Unit Price	Total Price
14 x 80 Shutters	606-65-1703	4 pr.	11.52	46.08
BE-53A Base Panels	436-55-0040	4	N/C	N/C
				46.08
Note: Above not in B/M for last 2 homes. Order Service			3% Tax	1.38
				47.46

(s) E. L. Akers, Jr./eld

DOCUMENT 752

UNITED STATES STEEL HOMES

DIVISION

United States Steel (USS) Corporation

New Albany, Indiana

Plant No. 1
Order Date 11-10-61
Customer Ref eld
Terms: No Charge

Invoice Date_____
M.S.O. No. 73357
Customer No. 944

MISCELLANEOUS SALES ORDER

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
Same

Routing: Best Way Prepaid ☒

Description	Code	Quantity	Unit Price	Total Price
Gutterboard AZ-39T	401-48-1030	472′		N/C

Note: Above short on 4 #710 plans.
Error in B/M. (Engineering)

(s) E. L. Akers, Jr./eld

DOCUMENT 760

UNITED STATES STEEL HOMES
DIVISION
United States Steel (USS) Corporation
New Albany, Indiana

Plant No. 1
Order Date 8-1-61
Customer Ref fep
Terms: Net 30 Days

Invoice Date
M.S.O. No. 72753
Customer No. 944

MISCELLANEOUS SALES ORDER

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO
See Below

Routing: For our delivery Collect ☒

Description	Code	Quantity	Unit Price	Total Price
Glass for English Sash (4′ Beacon Window)	----	2 pcs.	To be determined	

Purchasing:
Necessary glass to replace busted 4′ Beacon English Sash.

(s) G. W. Rosenberger/fep

DOCUMENT 775

UNITED STATES STEEL HOMES
DIVISION
United States Steel (USS) Corporation
New Albany, Indiana

Plant No. 1
Order Date 6-29-62
Customer Ref ely
Terms: No Charge

Invoice Date
M.S.O. No. 74488
Customer No. 944

MISCELLANEOUS SALES ORDER

SOLD TO
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO

Routing: Our Delivery 11:00 A.M. 6-29-62

Description	Code	Quantity	Unit Price	Total Price
BD53P Baseboard	106-20-0204	350′	.10	N/C

Accumulated shortages.

(s) E. L. Akers, Jr./ely

DOCUMENT 776

UNITED STATES STEEL HOMES
DIVISION
United States Steel (USS) Corporation
New Albany, Indiana

Plant No. 1
Order Date 6-8-62
Customer Ref ely
Terms: Net 30 Days

Invoice Date _____
M.S.Q. No. 74369
Customer No. 944

MISCELLANEOUS SALES ORDER

Routing: Deliver week of 6-11-62 w/counter tops

Description	Code	Quantity	Unit Price	Total Price
Diamond Glass for 4′ Sliding English Window (Stationary Side)		1 pc.	Price to be determined	
Diamond Glass for 4′ Sliding English Window (Vent Side)		1 pc.	Price to be determined	

(s) E. L. Akers, Jr./ely

DOCUMENT 811

UNITED STATES STEEL HOMES

DIVISION

United States Steel (USS) Corporation

New Albany, Indiana

Plant No. 1 — Invoice Date _____

Order Date 5-3-62 — M.S.O. No. 74140

Customer Ref ely

Terms: Net 30 Days — Customer No. 944

MISCELLANEOUS SALES ORDER

SOLD TO

Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

SHIP TO

Routing: Best Way — Collect ☒

Description	Code	Quantity	Unit Price	Total Price
Spray heads (Screw out part only) from hose spray) #400 Assembly		3	Price to be determined	

Changed
to aline head
Per Akers—Shay
5-14-62

(s) E. L. Akers, Jr./ely

DOCUMENT C-21

MEMORANDUM

To: W. H. Lang — March 3, 1960
From: R. C. Dyas
Subject: Fortner Enterprises, Inc.
Louisville, Kentucky
Acquisition and Development, $310,000

I have discussed the subject application by telephone with Mr. Boyd, pointing out the possibility that the dealer's lack of experience in the use of our product might result in a failure of this project and the eventual acquisition of the project real estate by the Credit Corporation.

Mr. Boyd expressed his willingness to assure the Credit Corporation that in the event the project real estate should be so acquired, the Homes Division would take immediate action to place the property into production, either through activity by the Construction Department or some other dealer in the area, or a combination of both.

Mr. Boyd understands that maturity of the loan must be sufficiently extended to provide for a two-year building program.

cc: D. H. Boyd

DOCUMENT C-23

UNITED STATES STEEL CORPORATION
Office of Administrative Vice President
and Treasurer

January 12, 1960

Mr. R. C. Dyas

FORTNER ENTERPRISES
Louisville, Kentucky

The Fortner loan on the new basis is an extreme. Once again, we have all the money in before many houses are built and we then are dependent upon (a) the sales market which exists; (b) the ability of the customer to make a satisfactory return etc. This means that to the best of our ability, we should try to find out as many facts as possible. Is the product which we intend erecting there competitive, comparable, reasonable, desirable for the area? Does a sales market exist in this price range? Are business conditions such that there probably are enough qualified buyers?

With regard to (b) above, we should know, if possible, or at least have confidence that the dealer can make a satisfactory profit from the use of our product. With all our money out front, he has very little incentive to finish off a project. If his profits are not adequate or are not comparable to his prior experience, then we probably do not have a good loan. In making this statement, it is not the financial risk aspects which are referred to, but rather the fact that the loan will not produce house sales. The worst thing that can happen—and perhaps we have it at Broyhill—is an unsuccessful development. This precludes, in most cases, any other house sales in that area, because the one we have there has been unsuccessful.

W. H. Lang

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT C-24

UNITED STATES STEEL HOMES
Division
United States (USS) Steel Corporation
INTER OFFICE MEMORANDUM
September 22, 1960

To: W. H. Rollins, Asst. General Manager—
Credit Corporation
From: H. R. Black, General Manager—Sales
Subject: Fortner Enterprises, Inc.

Dear Bill:

Attached is a resubmission of the original request on behalf of Fortner Enterprises, Inc., Louisville, Kentucky. I believe the attached memorandum by Mr. Day and the letter by Mr. Fortner clearly explains the situation as of this date.

Although this was in the category of special financing I have mentioned it to Mr. Boyd and whereas we are simply requesting a reactivation of an original commitment by the Credit Corporation which had been recommended by Mr. Boyd and others concerned, it is hoped that the Credit Corporation is in a position to make a direct contact.

Maybe the time element in this program has worked in our favor since we now have commitments in hand covering the 31 lots in question and if a financing situation can be consummated this would appear to be our fastest entry into the fall market in Louisville and possibly winter and spring building.

I realize that you desire to have Dick review this program with you once again and if it is possible we hope this can be accomplished during the week of September 26.

I will be in New Albany on September 28 and 29 and if I can be of any help I will be happy to meet with you and Dick and Fortner, if necessary.

Thanks for your consideration in this matter.

HRB/mlp
cc: W. L. Lieber
D. H. Boyd

DOCUMENT C-25

UNITED STATES STEEL CORPORATION
Division

United States(USS) Steel Corporation
INTER-OFFICE MEMORANDUM

Date Sept. 12, 1960

To: Mr. Harry R. Black, General Manager—Sales
From: N. G. Day, Manager—Field Sales
Subject: Fortner Enterprises, Inc.—Special Financing

On December 22, 1959, I submitted a financing request to you on behalf of Fortner Enterprises, Inc., Louisville, Kentucky, covering 186 lots in Golden Meadows Subdivision. At that time the land in question was owned by a corporation known as Iroquois Development, Inc. with ownership held equally between Mr. A. B. Fortner, Jr. and Mr. William RoBards. Mr. RoBards had agreed to sell his interest to Mr. Fortner and an agreement with the Credit Corporation was reached on that basis.

Models were selected, costs established and submissions were made to FHA for model homes for which satisfactory commitments were eventually received.

It appeared that the program was ready to go, then Mr. RoBards decided that it looked too good for him to relin-

quish his interest. This caused considerable delay and the agreement had to be extended and eventually allowed to expire.

Since they were at an impasse, Mr. Fortner decided to sell his interest to Mr. RoBards, subject to Mr. RoBards' ability to obtain the same financing arrangements from the Credit Corporation. As you know, our Treasury Department investigated and found that they could not recommend Mr. RoBards for financing.

Since that time I have met both principals and Mr. RoBards has now definitely agreed to sell his interest to Mr. Fortner and step out of the "deal" entirely.

Therefore, in a pursuant meeting with Mr. Fortner, he has stated that it is his desire to reinstate the original request and agreement, and if approved, proceed at once on construction of models and opening of a sales program.

You will recall that there are 31 lots completely developed and ready to use, with 155 to be developed. It is strongly felt that the 31 homes can be sold and shipped in 1960, with the 155 for a 1961 program. This will still give us our fastest entry into the Louisville market this year.

I have met and discussed this program with Mr. Fortner on several occasions and am convinced of his ability, enthusiasm and sincerity. He has the building organization, sales and promotion people, and financing know-how to make this program successful.

I respectfully request your earliest consideration of his request and your recommendations to the Credit Corporation.

/s/ Neil G. Day
Manager—Field Sales

NGD/df

DOCUMENT C-6

May 29, 1961

Mr. Harry R. Black
N. G. Day
Financing Request—Fortner Enterprises, Inc.

Dealer and Borrower:

The subject dealer, operating in Louisville, Kentucky, is a recently franchised dealer who is presently working with the Credit Corporation under a land development and construction loan agreement. Models and a sales program were opened in March, and to date the dealer reports over 40 firm sales, with several buyers having been approved and others in process. Production houses are now being shipped.

The dealer recently re-acquired an additional group of lots in Golden Meadows Subdivision and has six of our homes sold in this area even though no effort has been made in that direction.

Paul Grayson and I met with the dealer on May 19, to discuss requirements on this group of lots.

Project:

The lots are located within Golden Meadows Subdivision, a short distance from Fortner's existing program. They are fully developed, FHA approved and ready for use.

When the original loan for development and construction was made and closed, these lots were not available and were no longer owned by Iroquois Developers, Inc. or Fortner Enterprises, Inc. They had been sold, on a contract, to Apex Homes, Inc., Herman Miles, President. At that time, it was Mr. Miles' intent to build conventional homes on these lots. Since that time, Mr. Miles has become

general superintendent of Fortner Enterprises, Inc., United States Steel Homes project, and did not wish to build homes on his own in competition with Fortner, so on March 17, this year, the contract expired and the lots reverted to Iroquois Developers, Inc. It is now Mr. Fortner's desire to obtain full control of the lots in the name of Fortner Enterprises, Inc. and to build United States Steel Homes on the balance.

A mortgage of approximately $29,000 is held on these lots by a subsidiary of Louisville Mortgage Service. They have made a commitment to release 4 lots and make constructions loans on four of the six homes that are sold which will reduce the mortgage to approximately $24,000.

Financing:

In our meeting with Mr. Fortner, he stated that due to serious delays in getting his United States Steel Homes program started, and further delays in starting the sold houses, because of extremely wet weather all spring, and due to the fact that they had gone over their budget for advertising, furnishings, promotional materials, etc., by a considerable amount, he is in somewhat of a bind for capital.

There were originally 36 lots in the subject group, 34 of which were sold to Apex and 2 to another building, all of which are now available. Four of these being financed for construction of our homes, leaving 32 to be picked up.

Mr. Fortner's request is as follows:

Balance of mortgage on 32 lots.....	$24,000
Additional capital required.....	30,000
Total.....	$54,000

The FHA valuation on the lots in averaging $2,200 and Mr. Fortner suggested this as a release value which is the same as the previous, existing agreement. This would pay off the loan in 24 plus lot releases.

These lots are ready for use. Six sales have been made, 2 of which will apply to the requested loan. This program would give us a very definite added commercial advantage in this market.

I, therefore, recommend approval of this request and respectfully urge your usual expeditious handling and further recommendations to the Credit Corporation.

/s/ N. G. Day

NGD/df

Enclosure: Copy of contract between Iroquois and Apex

DOCUMENT C-7

June 5, 1961

Mr. David H. Boyd, President
Harry R. Black, Vice President—Sales
Financing Request—Fortner Enterprises, Inc.

The attached request for Fortner Enterprises, Inc. should allow us to achieve additional shipments into the Louisville area during this construction season. Mr. Day's report is complete and provides adequate information for our consideration. The loan request is actually to pay off a mortgage on the improved lots and to acquire additional working capital as needed by the Fortner operation.

As I have informed you in the past, Fortner Enterprises expended large amounts of money in advertising and promoting the project. As a matter of fact, they did one of the outstanding promotional jobs that I have seen in the past year. The market in the Louisville area has responded well to their promotion; and although delays were encountered due to bad weather, the program is now rolling, and we have accomplished in excess of 40 sales to date.

Affidavit of Kenneth L. Anderson—July 15, 1966

The loan on the improved lots as presented will not only assist him in this capital requirement, but should provide additional immediate funds because of the improved condition of the lots.

It is the recommendation of the Sales Department that the Credit Corporation meet with the principals of Fortner Enterprises, Inc. and negotiate this request.

HRB/df
Attachment
Distribution: D. H. Boyd (3)
W. L. Rollins
S. J. Mack
Andrew Cowart
N. G. Day

DOCUMENT C-13

R C D

1. A loan which is made, should be adequate to do the job.
2. A customer deserves our best cooperation. If he is a productive acc't & has a problem, how can we help solve it?
3. We avoid working capital loans as such be—
   a. Acct. must have some thing at risk.
   b. We are not in the business of just lending money—it must be associated directly with production of houses.
4. People's lack of comprehension of 2 programs & discussions about words are aggravating, but can't be a reason for action or inaction. If it is put up the wrong way get it right but our customer should not suffer.

DOCUMENTS C-11 and C-12

UNITED STATES STEEL HOMES
Division
United States (USS) Steel Corporation
New Albany, Indiana

DAVID H. BOYD
President

June 13, 1961

Mr. R. C. Dyas
Vice President and General Manager
U. S. Steel Homes Credit Corporation
71 Broadway
New York 6, New York

Dear Dick:

Under date of June 5 Harry Black forwarded to me, with copy for Bill Rollins, a memorandum concerning Fortner Enterprises, Inc.

It was the intention of the Sales Department to consider the contents of that memorandum as a request for special financing. In a sense it is, but I believe it relates largely to the existing financing situation with this dealer, and it may well be that a discussion with Mr. Fortner prior to processing any formalized request in this case would be in order.

Indications thus far are that Mr. Fortner has done a better than satisfactory job of introducing United States Steel Homes' product in his Louisville subdivision. It is apparent that he has spent considerable time, effort and money in promotional activity, but he does not yet have sufficient houses built and closed to provide for a normal turnover of money to meet the costs which he has thus far incurred.

I would appreciate it if you would review the problem with him.

Yours very truly,

/s/ DHB
President

Copy to New Albany Office
CC: H. R. Black 6/16/61
W. H. Lang:

This is the letter I mentioned to you.

Dave's theory seems to be that this simply represents a need by a dealer for general working capital to carry out his existing program, and, therefore, does not represent a request under the special program.

R. C. Dyas

DOCUMENT C-8

UNITED STATES STEEL HOMES
Division
United States (USS) Steel Corporation
New Albany, Indiana

COPY OF LETTER

June 13, 1961

Mr. R. C. Dyas
Vice President and General Manager
U. S. Steel Homes Credit Corporation
71 Broadway
New York 6, New York

Dear Dick:

Under date of June 5 Harry Black forwarded to me, with copy for Bill Rollins, a memorandum concerning Fortner Enterprises, Inc.

It was the intention of the Sales Department to consider the contents of that memorandum as a request for special financing. In a sense it is, but I believe it relates largely to the existing financing situation with this dealer, and it may well be that a discussion with Mr. Fortner prior to processing any formalized request in this case would be in order.

Indications thus far are that Mr. Fortner has done better than satisfactory job of introducing United States Steel Homes' product in his Louisville subdivision. It is apparent that he has spent considerable time, effort and money in promotional activity, but he does not yet have sufficient houses built and closed to provide for a normal turnover of money to meet the costs which he has thus far incurred.

I would appreciate it if you would review the problem with him.

Yours very truly,

/s/ DHB
President

Copy to New Albany Office
CC: H. R. Black

DOCUMENT C-5

MEMORANDUM

June 26, 1961

To: Mr. R. C. Dyas
From: Mr. W. L. Rollins
Subject: Fortner Enterprises, Inc.
Louisville, Kentucky

The captioned dealer was franchised on October 31, 1960, and presently has under development with U. S. Steel

houses and with financing provided by the Credit Corporation, Golden Meadows Subdivision, Louisville, Kentucky.

Status of Outstanding Loan:

	Authorized	Disbursed	Repaid	Outstanding	Maturity
Land Note #1.....	$ 88,000	$ 84,566	$ 6,600	$ 77,966	12-31-61
Land Note #2.....	231,920	133,718	—	133,718	12-31-62
Construction Note #1.	373,200	123,537	24,612	98,925	12-31-61
Construction Note #2.	1,362,180	—	—	—	12-31-62

The existing loan was made against 187 lots located in Gold Meadows Subdivision, of which number 30 were fully developed and 157 unimproved. Of the Land Notes aggregating $319,920, the amount of $170,500 was disbursed at loan closing to enable Mr. Fortner to buy out the other principal in Iroquois Developers, Inc., which at that time held title to the 187 lots in question and which company, following consummation of the stock purchase, transferred title to the property to our borrower, Fortner Enterprises, Inc.

Borrower reports in excess of 35 sales applicable to lots covered by the loan of which number evidence of 23 approved sales have been furnished to the Credit Corporation. In order to assure liquidation of Land Note #1 by maturity Borrower will have to erect and close approximately 35 houses by December 31, 1961.

Request:

Under date of 5-29-61 the subject dealer submitted another financing request to the Homes Division to cover 32 fully developed lots situated in Golden Meadows Subdivision, which lots are presently owned by Iroquois Developers, Inc. At the time of the negotiation and closing of our present loan the 32 lots in question had been contracted for sale by Iroquois to Apex Homes, Inc., for $68,000.00, payable within one year from the date of the contract, March 17, 1960. However, prior to actual consummation of the

sale Mr. Herman Miles, president of Apex Homes, Inc., became general superintendent of Fortner Enterprises, Inc., and consequently permitted the contract to expire.

Mr. Fortner has requested a land loan of $54,000 against the 32 improved lots, together with construction financing. Of the $54,000 land portion of the requested loan, approximately $24,000 would be utilized to retire an existing mortgage on the property, with the balance of $30,000 being requested by Fortner to replenish a portion of the working capital claimed to have been expended in connection with the programming and operation of the U. S. Steel subdivision and which has become frozen due to various delays incurred in placing the program in operation.

The aforementioned request was being processed through the Homes Division under the "special" financing program, however, prior to the formal submission thereof to the Credit Corporation, Mr. Boyd, President of the Homes Division, addressed a letter to you dated June 13, 1961, reading as follows:

> "Under date of June 5 Harry Black forwarded to me, with copy for Bill Rollins, a memorandum concerning Fortner Enterprises, Inc.
>
> "It was the intention of the Sales Department to consider the contents of that memorandum as a request for special financing. In a sense it is, but I believe it relates largely to the existing financing situation with this dealer, and it may well be that a discussion with Mr. Fortner prior to processing any formalized request in this case would be in order.
>
> "Indications thus far are that Mr. Fortner has done a better than satisfactory job of introducing United States Steel Homes' product in his Louisville subdivision. It is apparent that he has spent considerable time, effort and money in promotional activity, but he

does not yet have sufficient houses built and closed to provide for a normal turnover of money to meet the costs which he has thus far incurred.

"I would appreciate it if you would review the problem with him."

In compliance therewith I met with Mr. Fortner on June 20, 1961, in an effort to determine if there was a more conservative basis upon which we could provide financing on the lots in question and still be of assistance to him. Mr. Fortner's position was that he needed the financing as requested and felt that a loan similar to that which we originally made was justified.

Should a loan be provided as requested the same would be in the total amount of $462,400.00 as follows:

Total Estimated Valuation—$17,000 per lot—32 lots		$544,000.00
Total Maximum Loan—85% of valuation		$462,400.00
Land Note:		
Retire existing mortgage	$24,000	
Working Capital to Borrow	29,688	
Loan Fee	2,312	$ 56,000.00
Construction Note		406,400.00
Total Maximum Loan		$462,400.00

On a per lot basis the loan proceeds would be allocated:

Maximum Estimated Valuation	Maximum Loan (85%)	Allocated to Land Note	Allocated to Construction Note
$17,000	$14,450	$1,750	$12,700

Collateral:

A first lien would be offered as security on 32 fully developed building lots. The lots in question are presently

carried on the books of Iroquois Developers, Inc., at approximately $41,500 which apparently represents cost.

Estimated FHA lot valuation is at $2,200 per lot or a total valuation of $70,000.

The land portion of the requested loan amounting to $54,000 would result in a loan approximating 130% of cost and 77% of FHA improved lot valuation.

The proposed release value of $2,200 per lot would result in liquidation of the requested loan on closing of 25 lots, or approximately 78% of the total lots involved.

Construction funds would be disbursed on a stage basis on pre-sold houses.

Financial Condition:

Attached is unaudited balance sheet of Fortner Enterprises, Inc., as of May 31, 1961.

It will be noted that the statement was prepared by showing only as value of work in process those items of costs which had actually been paid and not including in this asset item any costs covering work which had been completed but which was covered by outstanding payables. I subsequently contacted Mr. Fortner's outside accounting firm and have been advised that as of May 31, 1961, payables due suppliers and subcontractors amounted to $27,845.45 (of which $9,457.60 have now been paid) and that $11,641.23 had been billed by United States Steel Homes Division for house packages.

It is evident that until such time as the subject might realize profits from closing in volume any further working capital must either be provided by Mr. Fortner from additional injection or from the proceeds of the requested loan.

Comments:

The improved lots which are the subject of this request are situated in the middle of the initial section of Golden Meadows Subdivision and are surrounded by existing

houses which seem to be well maintained. Mr. Fortner reports several sales are available to him on said lots and he is presently in process of erecting 4 of our houses thereon aided by local financing.

In viewing the subdivision, particularly that portion covered by our existing loan, the dealer has practically completed development of the small section of 17 lots (Section 1-F) which was the initial development phase provided for under our loan so as to test the market, and is making rapid progress with the development work in the adjacent section (Section 1-D) comprising 96 lots.

It appears that he has done a very good job with his models and his sales pricing seems to be below that offered by competitors. This should furnish reasonable assurance of capturing a better than fair share of the available market with the presently unknown factor being, of course, the ability to maintain adequate volume to absorb overhead costs and realize a profit.

As previously indicated herein Mr. Fortner stated that he needed the amount requested over and above that required to retire the existing mortgage to replenish working capital which had been depleted to date due to various delays. In this connection, in our discussion I informed Mr. Fortner that expenditures of this nature are normally borne by all builders and in many instances represents about the only risk capital a builder provides.

I further informed him that I felt that a construction loan on the lots in question with provision for disbursement of sufficient funds to retire the existing mortgage could probably be made but that it was difficult to justify a loan such as he was requesting in view of the substantial "front money" exposure we had incurred in our existing loan. Mr. Fortner took the position that he was entitled to the same consideration on this request as he received on the original loan.

Affidavit of Kenneth L. Anderson—July 15, 1966

In my opinion the expenditures heretofore made for promotional activities, model furniture, overhead, etc., represents about the only capital injection made in connection with our existing loan and another 100% loan to enable a recapture of a part of such expenditures is not justified.

However, should it be determined to authorize such a loan, the following terms and conditions are suggested:

1. Evidence of Indebtedness:
   a. Land Note in the principal amount of $56,000, maturing in one year, and bearing interest at the rate of 6% per annum, payable monthly, with provision being made for release of lien of the Land Note upon receipt of payment of $2,200 per lot.
   b. Construction Note in the principal amount of $406,400, maturing in one year and bearing interest at the rate of 6% per annum, payable at house closings.
2. Collateral:

   First lien on 32 fully developed building lots situated in Golden Meadows Subdivision.
3. Disbursements:
   a. Proceeds of Land Note to be disbursed at time of loan closing in payment of Loan Fee, retirement of existing mortgage, and balance to Borrower for working capital purposes.
   b. Proceeds of Construction Note to be advanced in stage disbursements as work progresses on pre-sold houses.
4. Other terms and conditions to be substantially in accordance with standard requirements imposed by the Credit Corporation in loans for land acquisition and construction financing.

BALANCE SHEET
FORTNER ENTERPRISES, INC. (A Kentucky Corporation)
MAY 31, 1961
ASSETS

CURRENT ASSETS			
Cash in bank		$ 6,271.95	
Account receivable		235.55	
Inventory—Golden Meadows Subdivision:			
(1) Land costs (191 lots)	$240,500.00		
(1) Land development costs and other costs allocable to land	12,742.30		
(1) Work in process—Model Homes and houses under construction	101,853.93		
Furnishing and decorating—Model Homes	11,970.45	367,066.68	
Deferred expenses:			
Interest—payment on Land Notes No. 1, and No. 2, Golden Meadows Subdivision	$ 5,723.30		
Promotion and advertising costs—Golden Meadows Subdivision	3,221.65		
Other deferred expenses	498.14	9,443.09	
Total Current Assets			$383,017.28
INVESTMENTS			
Land and dwellings (Three rental units)			
Net depreciated cost	$ 29,376.01		
Less: first mortgage notes payable	29,220.46	$ 155.55	
Federal National Mortgage Association Stock		734.00	889.55
TOTAL ASSETS			$383,906.83

NOTES: Work in process shown above includes only costs actually paid toward cost of construction of houses at balance-sheet date. Any costs due subcontractors, supervisors, etc. at balance-sheet date are not reflected herein either as an inventory item or account payable.

The above balance-sheet has been prepared from the books and records of Fortner Enterprises, Inc. and is presented without audit or verification.

LIABILITIES AND CAPITAL

CURRENT LIABILITIES		
First mortgage notes payable:		
(1) U. S. Steel Homes Credit Corporation—Land Note No. 1	$ 73,600.00	
(1) U. S. Steel Homes Credit Corporation—Land Note No. 2	107,175.00	
(1) U. S. Steel Homes Credit Corporation—Construction Note No. 1	106,820.82	$287,595.82
Loans payable:		
A. B. Fortner, Jr.	$ 25,000.00	
Iroquois Developers, Inc.	23,000.00	48,000.00
Accrued expenses		44.70
TOTAL CURRENT LIABILITIES		$335,640.52
CAPITAL		
Preferred stock outstanding	$ 6,000.00	
Common stock outstanding	1,000.00	
TOTAL	7,000.00	
Appreciation surplus	$62,000.00	
Deficiency in earned surplus	20,733.60	41,266.31	48,266.31
TOTAL LIABILITIES AND CAPITAL		$383,906.83

(1) First mortgage notes are secured by land and improvements in accordance with Loan Agreement and Mortgage Deed dated October 28, 1960, between Fortner Enterprises, Inc., and U. S. Steel Homes Credit Corporation.

NOTE: Appreciation surplus shown above resulted from revaluation of 186 subdivision lots acquired by the Company.

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT C-10

Mr. R. C. Dyas, Vice President — June 26, 1961
U. S. Steel Homes Credit Corporation
71 Broadway
New York 6, New York

Dear Mr. Dyas: — Re: Fortner Enterprises, Inc.
Proposed Additional Loan

Reference is made to Mr. Boyd's letter addressed to you under date of June 13, 1961, relative to the request submitted by the subject dealership for financing on approximately thirty-two additional lots in the Golden Meadows Subdivision, in which letter it was requested that the Credit Corporation review with Mr. Fortner his problem prior to any formalized processing of the case.

On June 20, 1961, accompanied by Mr. Grayson of the Homes Division and Mr. Leonard of the Credit Corporation, I met with Mr. Fortner on this matter and attached is a memorandum regarding his request.

There can be no question that the dealer has incurred substantial expenditures of which he has been unable to recover any portion to date. After discussing the matter with Mr. Fortner I can only conclude that a loan on any basis other than that which he has asked for would be unacceptable to him.

I am forwarding copies of this letter and enclosure to Mr. Boyd and Mr. Black so that they will be in a position to discuss the case with you.

Very truly yours,

WLR/df — W. L. Rollins
Encl. — Assistant General Manager
CC: Mr. D. H. Boyd
Mr. H. R. Black

Affidavit of Kenneth L. Anderson—July 15, 1966

DOCUMENT C-14

MEMORANDUM

June 26, 1961

To: Mr. R. C. Dyas
From: Mr. W. L. Rollins
Subject: Fortner Enterprises, Inc.
Louisville, Kentucky

The captioned dealer was franchised on October 31, 1960, and presently has under development with U. S. Steel houses and with financing provided by the Credit Corporation, Golden Meadows Subdivision, Louisville, Kentucky. Status of Outstanding Loan:

	Authorized	Disbursed	Repaid	Outstanding	Maturity
Land Note #1.....	$ 88,000	$ 84,566	$ 6,600	$ 77,966	12-31-61
Land Note #2.....	231,920	133,718	—	133,718	12-31-62
Construction Note #1.	373,200	123,537	24,612	98,925	12-31-61
Construction Note #2.	1,362,180	—	—	—	12-31-62

The existing loan was made against 187 lots located in Gold Meadows Subdivision, of which number 30 were fully developed and 157 unimproved. Of the Land Notes aggregating $319,920, the amount of $170,500 was disbursed at loan closing to enable Mr. Fortner to buy out the other principal in Iroquois Developers, Inc., which at that time held title to the 187 lots in question and which company, following consummation of the stock purchase, transferred title to the property to our borrower, Fortner Enterprises, Inc.

Borrower reports in excess of 35 sales applicable to lots covered by the loan of which number evidence of 23 approved sales have been furnished to the Credit Corporation. In order to assure liquidation of Land Note #1 by maturity Borrower will have to erect and close approximately 35 houses by December 31, 1961.

Affidavit of Kenneth L. Anderson—July 15, 1966

Request:

Under date of 5-29-61 the subject dealer submitted another financing request to the Homes Division to cover 32 fully developed lots situated in Golden Meadows Subdivision, which lots are presently owned by Iroquois Developers, Inc. At the time of the negotiation and closing of our present loan the 32 lots in question had been contracted for sale by Iroquois to Apex Homes, Inc., for $68,000.00, payable within one year from the date of the contract, March 17, 1960. However, prior to actual consummation of the sale Mr. Herman Miles, president of Apex Homes, Inc., became general superintendent of Fortner Enterprises, Inc., and consequently permitted the contract to expire.

Mr. Fortner has requested a land loan of $54,000 against the 32 improved lots, together with construction financing. Of the $54,000 land portion of the requested loan, approximately $24,000 would be utilized to retire an existing mortgage on the property, with the balance of $30,000 being requested by Fortner to replenish a portion of the working capital claimed to have been expended in connection with the programming and operation of the U. S. Steel subdivision and which has become frozen due to various delays incurred in placing the program in operation.

The aforementioned request was being processed through the Homes Division under the "special" financing program, however, prior to the formal submission thereof to the Credit Corporation, Mr. Boyd, President of the Homes Division, addressed a letter to you dated June 13, 1961, reading as follows:

> "Under date of June 5 Harry Black forwarded to me, with copy for Bill Rollins, a memorandum concerning Fortner Enterprises, Inc.
>
> "It was the intention of the Sales Department to consider the contents of that memorandum as a request for special financing. In a sense it is, but I believe it

relates largely to the existing financing situation with this dealer, and it may well be that a discussion with Mr. Fortner prior to processing any formalized request in this case would be in order.

"Indications thus far are that Mr. Fortner has done a better than satisfactory job of introducing United States Steel Homes' product in his Louisville subdivision. It is apparent that he has spent considerable time, effort and money in promotional activity, but he does not yet have sufficient houses built and closed to provide for a normal turnover of money to meet the costs which he has thus far incurred.

"I would appreciate it if you would review the problem with him."

In compliance therewith I met with Mr. Fortner on June 20, 1961, in an effort to determine if there was a more conservative basis upon which we could provide financing on the lots in question and still be of assistance to him. Mr. Fortner's position was that he needed the financing as requested and felt that a loan similar to that which we originally made was justified.

Should a loan be provided as requested the same would be in the total amount of $462,400.00 as follows:

Total Estimated Valuation—$17,000 per lot—32 lots		$544,000.00
Total Maximum Loan—85% of valuation		$462,400.00
Land Note:		
Retire existing mortgage	$24,000	
Working Capital to Borrower	29,688	
Loan Fee	2,312	$ 56,000.00
Construction Note		406,400.00
Total Maximum Loan		$462,400.00

On a per lot basis the loan proceeds would be allocated:

Maximum Estimated Valuation	Maximum Loan (85%)	Allocated to Land Note	Allocated to Construction Note
$17,000	$14,450	$1,750	$12,700

Collateral:

A first lien would be offered as security on 32 fully developed building lots. The lots in question are presently carried on the books of Iroquois Developers, Inc., at approximately $41,500 which apparently represents cost.

Estimated FHA lot valuation is at $2,200 per lot or a total valuation of $70,000.

The land portion of the requested loan amounting to $54,000 would result in a loan approximating 130% of cost and 77% of FHA improved lot valuation.

The proposed release value of $2,200 per lot would result in liquidation of the requested loan on closing of 25 lots, or approximately 78% of the total lots involved.

Construction funds would be disbursed on a stage basis on pre-sold houses.

Financial Condition:

Attached is unaudited balance sheet of Fortner Enterprises, Inc., as of May 31, 1961.

It will be noted that the statement was prepared by showing only as value of work in process those items of costs which had actually been paid and not including in this asset item any costs covering work which had been completed but which was covered by outstanding payables. I subsequently contacted Mr. Fortner's outside accounting firm and have been advised that as of May 31, 1961, payables due suppliers and subcontractors amounted to $27,845.45 (of which $9,457.60 have now been paid) and that $11,641.23 had been billed by United States Steel Homes Division for house packages.

It is evident that until such time as the subject might realize profits from closing in volume any further working capital must either be provided by Mr. Fortner from additional injection or from the proceeds of the requested loan.

Comments:

The improved lots which are the subject of this request are situated in the middle of the initial section of Golden Meadows Subdivision and are surrounded by existing houses which seem to be well maintained. Mr. Fortner reports several sales are available to him on said lots and he is presently in process of erecting 4 of our houses thereon aided by local financing.

In viewing the subdivision, particularly that portion covered by our existing loan, the dealer has practically completed development of the small section of 17 lots (Section 1-7) which was the initial development phase provided for under our loan so as to test the market, and is making rapid progress with the development work in the adjacent section (Section 1-D) comprising 96 lots.

It appears that he has done a very good job with his models and his sales pricing seems to be below that offered by competitors. This should furnish reasonable assurance of capturing a better than fair share of the available market with the presently unknown factor being, of course, the ability to maintain adequate volume to absorb overhead costs and realize a profit.

As previously indicated herein Mr. Fortner stated that he needed the amount requested over and above that required to retire the existing mortgage to replenish working capital which had been depleted to date due to various delays. In this connection, in our discussion I informed Mr. Fortner that expenditures of this nature are normally borne by all builders and in many instances represents about the only risk capital a builder provides.

I further informed him that I felt that a construction loan on the lots in question with provision for disbursement of sufficient funds to retire the existing mortgage could probably be made but that it was difficult to justify a loan such as he was requesting in view of the substantial "front money" exposure we had incurred in our existing loan. Mr. Fortner took the position that he was entitled to the same consideration on this request as he received on the original loan.

In my opinion the expenditures heretofore made for promotional activities, model furniture, overhead, etc., represents about the only capital injection made in connection with our existing loan and another 100% loan to enable a recapture of a part of such expenditures is not justified.

However, should it be determined to authorize such a loan, the following terms and conditions are suggested:

1. Evidence of Indebtedness:
   a. Land Note in the principal amount of $56,000, maturing in one year, and bearing interest at the rate of 6% per annum, payable monthly, with provision being made for release of lien of the Land Note upon receipt of payment of $2,200 per lot.
   b. Construction Note in the principal amount of $406,400, maturing in one year and bearing interest at the rate of 6% per annum, payable at house closings.
2. Collateral:

   First lien on 32 fully developed building lots situated in Golden Meadows Subdivision.
3. Disbursements:
   a. Proceeds of Land Note to be disbursed at time of loan closing in payment of Loan Fee, retirement

of existing mortgage, and balance to Borrower for working capital purposes.

b. Proceeds of Construction Note to be advanced in stage disbursements as work progresses on pre-sold houses.

4. Other terms and conditions to be substantially in accordance with standard requirements imposed by the Credit Corporation in loans for land acquisition and construction financing.

DOCUMENT C-9

[UNITED STATES STEEL HOMES LETTERHEAD]

June 29, 1961

Mr. W. H. Lang, President and Treasurer
U. S. Steel Homes Credit Corporation
71 Broadway
New York 6, New York

Fortner Enterprises, Inc.

Dear Mr. Lang:

Under date of June 5, I received in this office the attached recommendation from Harry R. Black, Vice President—Sales, covering an additional financing request under the special program for the subject dealer.

Since I recognized, after a review of the recommendation, that the request was in effect an extension of, and directly related to, the existing program which this dealer is now following, I suggested to R. C. Dyas that a preliminary discussion be held with the dealer pending the processing of any formal action. This discussion was held on June 20 by W. L. Rollins, and a copy of Mr. Rollins' report was sent to this office.

Affidavit of Kenneth L. Anderson—July 15, 1966

Subsequent to its receipt, I have discussed the subject more fully with Harry Black, and despite the liberal nature of the request and proposal, it is his judgment that this additional financing provides an important commercial benefit to us in the Louisville area. He has indicated to me that the dealer is earning a profit on the sale of the product, and has further stated that the dealer has in excess of thirty-five sales ahead. Assuming that these can be closed this year, they should be sufficient to permit the dealer to liquidate his 1961 indebtedness on schedule.

Control will continue to be exercised over the dealer's operations in order to prevent the possibility of speculative building.

Our Treasury Department indicates that dealings thus far have been satisfactory.

Consequently, it is recommended that consideration be given to further negotiations with Mr. Fortner so that a continuing program may be provided.

Yours very truly,

D. H. Boyd,
President

Enc.
CC: R. C. Dyas
H. R. Black
W. L. Lieber

DOCUMENT C-16

If we all *create* and *understand* some principles we are *seldom* in this situation—this is not *new* but a part of any group wanting to make a joint accomplishment. Such understanding must come from close working together and not these formal exchanges. I don't like the type of

loan the dealers attitude, etc. etc., but I also don't like the time it has taken, the back and forth inter-Co. Conversation and after all that, a dismissal of the case when Homes & Credit are miles apart from any common understanding! How can this be explained!

DOCUMENT C-17

MEMORANDUM

July 6, 1961

TO: W. H. Lang
FROM: R. C. Dyas
SUBJECT: Fortner Enterprises, Inc.
Louisville, Kentucky

Chronology of this loan request as follows:

June 5. Rollins receives copies of a loan request dated May 29, memo dated May 29 from Day to Black, and memo dated June 5 from Black to Boyd, endorsing request under special program. Copies of such memos are furnished Credit Corporation for advance information only. No action is taken until Boyd formally endorses for Homes Division.

June 9. Rollins and Dyas confer with Boyd and Black in Boyd's office (New Albany) and present objections to loan. Boyd and Black emphasize commercial importance and ask that we confer with Fortner to see if anything can be worked out.

June 13. Boyd forwards letter to Dyas which does not endorse request but reiterates desire for Credit Corporation to meet with Fortner and "review the problem with him." Rollins makes appointment to meet with Fortner on Saturday, June 17, which is earliest available for Fortner,

and at Fortner's request this is subsequently postponed to June 20.

June 16. Dyas discusses with Lang, who counsels cooperative approach (see file).

June 20. Rollins meets with Fortner and develops information contained in his report of June 26. Preparation of report is delayed while Fortner prepares and furnishes balance sheet attached as exhibit.

June 28. Dyas receives Rollins' report and discusses same with Black who also has copy. Black says he will talk with Boyd and call back.

June 30. Dyas advised Lang on status.

July 5. Black calls Dyas and advises Homes Division endorses request. Meanwhile, letter from Boyd to Lang dated June 29, asking that "further negotiations" be conducted.

While a solid month has transpired since we first heard of this request, we have lost no time whatever in cooperating with Homes and the dealer, meanwhile handling the other work of the Credit Corporation. There can be no criticism by anyone on this score.

If the overall impression is one of inefficiency, this is readily admitted in behalf of all concerned. It is the same inefficiency which results from any group of two or more cooks brewing the same broth, or a football team without a quarterback. Sometimes there is a wide gap between the ideals of a town meeting and its accomplishments.

The lack of common understanding between Homes and Credit is easily explained. One is interest almost exclusively in shipments; the other in applying some semblance of business judgment in loan transactions which actually are not more than speculations on the promotional capabilities of opportunists called home builders.

How this common understanding can be improved without formal exchanges and informal conversations—both of which you say you dislike—is beyond my comprehension. There has been no lack of working together in this case. There is simply a difference of opinion, and somebody has to make a decision. Meanwhile, the dealer is waiting.

As I advised you the other day, I have discussed with Black the idea of joint meetings between Homes and Credit in New Albany once a week or every two weeks if it will help to improve the common understanding of which you speak. It probably would result only in loading more of Homes' responsibilities on our shoulders, without reciprocal authority, but I am willing to try.

Amen.

DOCUMENT C-18

Re: Fortner Enterprises, Inc.
Louisville, Kentucky
Loan Status as of 4/30/62

Date of Loan	Loan No.	Loan Type	Original Amount	Rem. Commit.	Unpaid Balance	Maturity Date
10/28/60	1568	A & D (S)	$ 88,000	00	00	—
	1568	C(R)	373,200	78,631	28,980	6/ 1/62
	1568	A & D (S)	231,920	30,902	200,757	12/31/62
	1568	C(R)	1,362,180	1,235,436	105,784	12/31/62
8/ 2/61	1602	A(S)	59,000	00	52,400	12/31/62
	1602	C(R)	403,400	379,641	00	12/31/62
TOTALS			$2,517,700	$1,724,610	$387,921	

Security:

Loan No. 1568 originally was secured by first mortgage on 186 lots, with release values sufficient to retire the two land notes over 146 lots. Loan No. 1602 is secured by first mortgage on 32 lots, with release values sufficient to retire the land note over 25 lots.

Shipments:

67 shipments have been made. Release values paid to date have been sufficient to retire the $88,000 land note under Loan No. 1568.

R. C. Dyas
May 15, 1962

DOCUMENT C-19

May 11, 1962

W. H. Lang

Bill Rollins has just received a copy of this letter today. Thought you should be advised immediately. R. C. Dyas

Boyd—Discussed today— (illegible) to Bird writing (illegible) RCD will try to see if can't keep (illegible) basis instead of allowing written parts to become issues.

DOCUMENT C-20

Hamilton, Hopsin & Hamilton
Attorneys at Law
Louisville, Kentucky

May 11, 1962

United States Steel Homes Division
United States Steel Corporation
2549 Charlestown Road
New Albany, Indiana

ATT: Mr. D. H. Boyd, President

Gentlemen:

On or about October 28, 1960, Fortner Enterprises Inc., entered into a formal arrangement with the United States

Steel Homes Credit Corporation whereby it was agreed that the United States Steel Homes Credit Corporation would extend credit to Fortner Enterprises under condition that Fortner Enterprises construct homes in Golden Meadow Subdivision out of component parts manufactured and furnished by the United States Steel Homes Division of United States Steel Corporation.

Since the inception of this contract Fortner Enterprises have in good faith constructed homes of these components in Golden Meadow Subdivision and expended large sums of money in a diligent effort to bring about the sale of these units. However, it is very apparent that many of the components furnished by the United States Steel Homes Division are inferior and of sub-quality and no amount of care or promotion by Fortner Enterprises has been able to overcome these serious shortcomings.

Therefore, it is incumbent that arrangements be made to compensate Fortner Enterprises for the damage it has sustained in the past and can reasonably expect to sustain in the future due to these defective products which have in turn greatly damaged the reputation of Golden Meadow Subdivision.

Would you please have your representative contact this office no later than one week from the date of this letter in order that we may avoid the necessity of costly litigation.

Sincerely yours,

Hamilton, Hopsin & Hamilton
A. Scott Hamilton, Jr.

cc: H. R. Black
W. R. Rollins

U. S. STEEL HOMES CREDIT CORPORATION
FINANCIAL STATEMENTS

DECEMBER 31, 1961
PRICE WATERHOUSE & CO.

February 27, 1962

To the Board of Directors
U. S. Steel Homes Credit Corporation

In our opinion, the accompanying financial statements present fairly the financial position of U. S. Steel Homes Credit Corporation at December 31, 1961 and the results of its operations for the year, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Our examination of these statements was made in acccordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Price Waterhouse Co.

U. S. STEEL HOMES CREDIT CORPORATION

(a wholly owned subsidiary of
United States Steel Corporation)

BALANCE SHEET

	December 31, 1961	December 31, 1960
Assets		
Cash	$ 373,374	$ 287,638
Construction loans to builders, secured by mortgages	3,696,305	4,817,911
Land development and financing loans, secured by mortgages	5,917,748	5,371,955
Advances on mortgages on homes under construction	167,966	379,978
Warehouse Agreement loans	4,042,126	4,294,494
Individual home mortgages	92,511	116,029
Other loans	167,175	222,793
Federal National Mortgage Association stock	5,007	5,007
	$14,061,838	$15,208,167
Less—Reserves	299,264	128,263
	13,762,574	15,079,904
Interest and other receivables	279,459	146,102
	$14,415,407	$15,513,644

Liabilities and Net Worth		
Demand notes payable to banks	$12,000,000	$13,125,000
Note payable to United States Steel Corporation (subordinated to bank loans)	1,000,000	1,000,000
Accrued interest and other payables	131,909	171,155
Accrued taxes	54,995	48,039
	13,186,904	14,344,194
Capital stock and accumulated income: Capital stock:		
Authorized—100,000 shares at December 31, 1961 and 50,000 shares at December 31, 1960; $100 par value		
Issued and outstanding—10,000 shares	1,000,000	1,000,000
Accumulated income, per attached statement	228,503	169,450
	1,228,503	1,169,450
	$14,415,407	$15,513,644

NOTES TO FINANCIAL STATEMENTS

At December 31, 1961, the corporation had commitments to purchase mortgages or to make additional loans up to approximately $37,000,000.

The corporation's parent company has agreed that upon request, it will purchase an additional 90,000 shares of the corporation's capital stock at par and lend the corporation an additional $29,000,000, such loan to be subordinated to bank loans.

U. S. STEEL HOMES CREDIT CORPORATION

(a wholly owned subsidiary of
United States Steel Corporation)

STATEMENT OF INCOME AND ACCUMULATED INCOME

	December 1,	
	1961	1960
Income:		
Interest	$862,426	$656,523
Loan fees	109,850	120,629
	972,276	777,152
Expenses:		
Interest on loans payable	621,200	515,000
General and administrative expenses	69,403	65,404
Provision for bad debts	171,000	99,750
Provision for federal income taxes	51,620	44,801
	913,223	724,955
Net profit for the year	59,053	52,197
Accumulated income at beginning of year	169,450	117,253
Accumulated income at end of year	$ 228,503	$169,450

U. S. STEEL HOMES CREDIT CORPORATION
FINANCIAL STATEMENTS

DECEMBER 31, 1962
PRICE WATERHOUSE & CO.

February 26, 1963

To the Board of Directors
U. S. Steel Homes Credit Corporation

In our opinion, the accompanying fiancial statements present fairly the financial position of U. S. Steel Homes Credit Corporation at December 31, 1962, and the results of its operations for the year, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Our examination of these statements was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Price Waterhouse Co.

U. S. STEEL HOMES CREDIT CORPORATION

(a wholly owned subsidiary of
United States Steel Corporation)

BALANCE SHEET

	December 31, 1962	December 31, 1961
Assets		
Cash	$ 349,661	$ 373,374
Construction loans to builders, secured by mortgages	4,883,205	3,669,305
Land development and financing loans, secured by mortgages	7,082,092	5,917,748
Advances on mortgages on homes under construction		167,966
Warehouse Agreement loans	2,504,448	4,042,126
Individual home mortgages	93,272	92,511
Other loans		167,175
Federal National Mortgage Association stock	5,007	5,007
	14,568,024	14,061,838
Less—Reserves	299,264	299,264
	14,268,760	13,762,574
Interest and other receivables	297,172	279,459
	$14,915,593	$14,415,407

Liabilities and Net Worth		
Demand notes payable to banks	$ 9,190,000	$12,000,000
Note payable to United States Steel Corporation (subordinated to bank loans)	4,000,000	1,000,000
Accrued interest and other payables	255,512	131,909
Accrued taxes	121,159	54,995
	$13,566,671	$13,186,904
Capital stock and accumulated income:		
Capital stock:		
Authorized—100,000 shares of $100 par value		
Issued and outstanding—10,000 shares	1,000,000	1,000,000
Accumulated income, per attached statement	348,922	228,503
	1,348,922	1,228,503
	$14,915,593	$14,415,407

NOTES TO FINANCIAL STATEMENTS

At December 31, 1962, the corporation had commitments to purchase mortgages or to make additional loans up to approximately $31,000,000.

The corporation's parent company has agreed that upon request, it will purchase an additional 90,000 shares of the corporation's capital stock at par and lend the corporation an additional $26,000,000 such loan to be subordinated to bank loans.

U. S. STEEL HOMES CREDIT CORPORATION

(a wholly owned subsidiary of
United States Steel Corporation)

STATEMENT OF INCOME AND ACCUMULATED INCOME

	December 31,	
	1962	1961
Income:		
Interest	$744,761	$862,426
Loan fees	112,338	109,850
	857,099	972,276
Expenses:		
Interest on loans payable	544,004	621,200
General and administrative expenses	75,031	69,403
Provision for bad debts		171,000
Provision for federal income taxes	117,645	51,620
	736,680	913,223
Net profit for the year	120,419	59,053
Accumulated income at beginning of year	228,503	169,450
Accumulated income at end of year	$348,922	$228,503

Affidavit of Kenneth L. Anderson—July 15, 1966

[LETTERHEAD OF MIDDLETON, SEELBACH, WOLFORD, WILLIS & COCHRAN]

November 11, 1963

Mr. Kenneth L. Anderson
1805 Kentucky Home Life Building
Louisville, Kentucky 40202

RE: No. 4392
United States District Court
Fortner v. United States Steel Corporation

Dear Mr. Anderson:

Herewith you will find the answer to Interrogatory 5 (a) addressed to U. S. Steel Homes Credit Corporation:

5a. For each of the years 1960 through 1962 the total amount of loan commitments entered into by U. S. Steel Homes Credit Corporation for each state in which it entered into loan commitments during this period was as follows:

	1960	1961	1962
Alabama	$1,567,400	$ 8,000	$
Illinois	150,000	4,159,700	918,825
Indiana	1,296,275	798,900	1,371,893
Kentucky	2,705,655	1,222,190	928,165
Minnesota		22,000	
Missouri	1,786,000	2,759,642	2,309,165
New York	800,000		
Ohio	14,960,475	8,519,180	5,664,638
Pennsylvania			174,270
Wisconsin	160,000		600,000
Virginia		1,875,000	7,316,588

If you require this information sworn to, I can arrange to have Mr. Rollins do so. However, I will not undertake this task unless you do.

With kind regards.

Yours very truly,

Albert F. Reutlinger

AFR:jb
cc: Mr. A. Scott Hamilton, Jr.

[LETTERHEAD OF MIDDLETON, SEELBACH WOLFORD, WILLIS & COCHRAN]

May 4, 1964

Mr. Kenneth L. Anderson
1805 Kentucky Home Life Building
Louisville, Kentucky 40202

RE: No. 4392
United States District Court
Fortner Enterprises, Inc. v.
United States Steel Corporation, et al

Dear Ken:

This letter will supplement the recent depositions taken in New York and I believe gives the information sought from the witnesses:

1. United States Steel Corporation acquired Gunnison Housing Corporation in June, 1944.

2. For the years 1960 to 1962, both inclusive, U. S. Steel Homes Credit Corporation was qualified to do business in the following states:

Alabama (from 3/23/60)	Missouri (from 3/15/60)
Connecticut	New York
Illinois	Ohio
Indiana	Oklahoma
Iowa	Pennsylvania
Kansas	Tennessee (from 1/4/60)
Kentucky	Virginia
Michigan	West Virginia
Minnesota	Wisconsin

3. The estimated percentages of total shipments of house "packages" by the Homes Division which were made to dealers receiving financial assistance from the Credit Corporation for the years 1960 to 1963, both inclusive, are:

1960	68%
1961	70%
1962	75%
1963	51%

4. The interest rate charged by the Credit Corporation on loans authorized in the years 1960 and 1961 was 6% per annum.

5. The loan referred to in Syracuse, New York, was made on March 1, 1960, to Terryland, Inc., 500 Liverpool Road, Liverpool, New York. The total amount of loan authorized was $800,000.00. The outstanding principal balance was repaid on June 12, 1961.

6. During 1958 to 1962, both inclusive, the following loans were made which did not involve Loan Agreements. All borrowers were located in Dayton, Ohio, and all loans were for short-term working capital purposes, on a Demand Note:

Name of Borrower	Date Authorized	Amount	Date Repaid
Highland Terrace, Inc.	6-21-61	$ 50,000.00	7-11-61
Valley Hi, Inc.	6-21-61	60,000.00	7-11-61
Steel Homes, Inc.	6-21-61	27,000.00	7-11-61
Carter C. Willsey & Forest J. Stump	9-18-61	135,000.00	10- 4-61
Valleydale Builders, Inc.	9-22-61	50,000.00	10- 4-61
Hoosier Villas, Inc.	1-25-62	108,000.00	2- 8-62
Third Hoosier Villas, Inc.	1-25-62	38,000.00	2- 8-62
Fourth Hoosier Villas, Inc.	1-25-62	45,000.00	2- 8-62
Carter C. Willsey & Forest J. Stump	1-25-62	47,000.00	2- 8-62
Willow Dell Builders, Inc.	4-27-62	67,000.00	5- 7-62

I also enclose Credit Corporation's financial statements for 1955, 1956, 1961, 1962 and 1963. At the time of the

deposition, you were furnished similar statements for the years 1957, 1958, 1959 and 1960.

From Mr. Rawlins' files are certified copies of certain documents at your request.

With personal regards.

Yours very truly,

Albert F. Reutlinger

AFR:jb
cc: Mr. A. Scott Hamilton, Jr.
Enclosures

[LETTERHEAD OF U. S. STEEL HOMES CREDIT CORP.]

April 23, 1964

I hereby certify that the attached documents contain true and correct copies of minutes included in the minutes of the Executive Committee and Board of Directors of U. S. Steel Homes Credit Corporation and that the copies of the Certificate of Incorporation and Amendment thereto and of the By-Laws of U. S. Steel Homes Credit Corporation are true and correct copies of said documents.

B. L. Rawlings, Secretary

U. S. STEEL HOMES CREDIT CORPORATION

Meeting of Executive Committee held at New York, N. Y. on February 19, 1954 at 11:30 A.M.

There were present the following members of the Committee:

H. E. Isham,
W. H. Lang,
R. C. Tyson,

constituting a quorum of the Committee, and

C. B. Vernooy, Comptroller,
B. L. Rawlins, Secretary.

In the absence of the Chairman, the President, W. H. Lang, acted as Chairman of the meeting.

Servicing
Mortgages.

After discussion, on motion unanimously carried, it was determined that the officers should investigate the feasibility of the corporation itself servicing the mortgages which will be involved in the first projects of the corporation and to arrange to handle such servicing if feasible; failing that, to negotiate with the local servicing agencies in Louisville, Kentucky, to obtain an option on the services of such agencies for the servicing of mortgages which might be taken in the New Albany, Indiana, territory, and if such arrangements cannot be made, to bring together the local servicing agencies and the prospective purchaser or purchasers of mortgages on homes in that area so that they may make their own arrangements with respect to servicing of mortgages.

Construction
Financing.

The Chairman recommended that the corporation offer construction financing to dealer-builders in connection with any project where it is proposed to arrange the mortgage financing of the sale of completed homes, but pointed out that the arrangements relating to the mortgage financing of the completed homes should not in any sense be made contingent upon the dealer financing the construction of the homes through the corporation. On motion unanimously carried, this recommendation was approved.

Issuing Additional
Capital Stock
and
Establishing Lines
of
Credit.

The Chairman stated that certain projects were in contemplation which, if concluded, would require the use of substantial funds in construction financing. He stated that the corporation should have a line of credit in an amount of from $3,000,000 to $5,000,000 and pointed out that the establishment of such line of credit would require an increase in the paid-in capital.

After discussion, on motion unanimously carried, the officers were authorized to request United States Steel Corporation to pay in at this time an additional $400,000 against its subscription for 10,000 shares of the capital stock of this corporation with certificate for an additional 4,000 shares of the capital stock of this corporation being issued upon receipt of such payment and the officers were also authorized, following receipt of such additional capital, to establish lines of credit of from $3,000,000 to $5,000,000, with such lines to be developed locally coincidentally as required through correspondents of New York Banks or otherwise.

Approval
of
Projects.

After discussion, on motion unanimously carried, the officers of the corporation were authorized to proceed with the negotiation of any project involving mortgage or construction financing upon the approval of any three members of the Executive Committee of this corporation of a statement outlining the project, or upon action by the

Executive Committee or the Board of Directors at a meeting of such Committee or of such Board.

Adjournment.

On motion, unanimously carried, the meeting adjourned.

/s/ B. L. Rawlins
Secretary

U. S. STEEL HOMES CREDIT CORPORATION
DIRECTORS' MEETING
DECEMBER 16, 1958

"A report was made on the financial position of the corporation and on its loan and mortgage transactions.

Also, there was presented a report on proposed operations in 1959 of United States Steel Homes Division of United States Steel Corporation and a proposed program of certain financial transactions by this corporation in connection with those operations was outlined.

After discussion, on motion, duly seconded, the following resolution was unanimously adopted:

Approval
of
Program
for
Financial
Transactions

RESOLVED: That, for the purposes of enabling the United States Steel Homes Division of United States Steel Corporation (1) to attain a minimum distribution of 1,800 units in 1959, and such additional distribution as may be feasible, and (2) to enlist and maintain the support of and assistance of selected dealers in the development and test-

ing of steel components, and when specially requested by the Homes Division,—

A. This corporation, in instances in which its present programs of loans, mortgage commitment issuance, and mortgage commitment procurement prove inadequate to effectuate the above purposes, extend the following financial assistance to dealers in addition to its present programs:

1. Make loans to or for the benefit of dealers or enter into other forms of transactions designed directly to effectuate the above purposes, without conformity with conventional or conservative patterns but within the bounds of prudent business judgment;

2. Issue commitments for the purchase of FHA-insured and VA-guaranteed mortgages at fixed discount expense, and hold and liquidate mortgages acquired thereunder as promptly as may be practicable with minimum loss, if any, consistent with the limitation of the $33,000,000 revolving fund;

provided,

B. That the United States Steel Homes Division underwrite and guarantee all loss incurred in the liquidation of mortgages acquired under any commitments providing fixed discount expense, to the extent which such loss may exceed the loss which would have been incurred if the commitments had provided fixed discount expense corresponding with that fixed generally by institutional issuers of stand-by commitments, as determined by the Credit Corporation at the time of issuance of the commitment;

and the officers of this corporation be, and hereby they are, authorized to enter into transactions comprehended within this resolution."

CERTIFICATE OF INCORPORATION
OF
U. S. STEEL HOMES CREDIT CORPORATION

WE, THE UNDERSIGNED, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the General Corporation Law of the State of Delaware, do hereby certify as follows:

FIRST: The name of the Corporation is U. S. STEEL HOMES CREDIT CORPORATION.

SECOND: The principal office of the Corporation in the State of Delaware is located at No. 100 West 10th Street in the City of Wilmington 99, County of New Castle. The name of its resident agent is The Corporation Trust Company, whose address is No. 100 West 10th Street in said City of Wilmington.

THIRD: The purposes for which the Corporation is to be formed are to do any or all things hereinafter set forth to the same extent as natural persons might do or could do in any part of the world, namely:

1. To engage in the real estate mortgage loan business, either as principal, agent or broker, within or without the State of Delaware, including, but not by way of limitation, the power to negotiate loans whether or not guaranteed by governmental agencies or other persons, firms, partnerships, corporations or associations on real estate and on personal property appurtenant thereto and the power to lend money on notes, bonds or other evidence of indebtedness secured by mortgages, trust deeds or building loan agreements on real estate together with the personal property appurtenant thereto, wherever situated, and in connection therewith to purchase or otherwise acquire, buy, take, hold, own, transfer, exchange, sell, assign, convey,

pledge, endorse, negotiate, guarantee or otherwise deal in, make advances on or dispose of promissory notes, bonds, obligations, real estate mortgages, trust deeds, contracts, choses in action or other evidence or instruments of indebtedness or security made, drawn, given, executed, endorsed or assigned by any person, firm, association, partnership or corporation, domestic or foreign.

2. To acquire by lease, sublease, purchase, contract, concession, tax lien, foreclosure, legal action or proceeding, gift or contribution or otherwise, and to own, hold, manage, control, enjoy, develop, exploit, explore, improve, operate, maintain, encumber, sell at public or private sale, by auction or otherwise, or otherwise turn to account, mortgage, grant, pledge, exchange, convey, lease, license or sublicense, or otherwise dispose of, deal and trade in any and all lands, surface or subsurface, real property, options, concessions, leaseholds, grants, land patents, tax liens, franchises, claims, rights, privileges and easements, tenements, appurtenances and hereditaments, interests, or any other rights in land, and other property, personal or mixed, wherever situated, which this Corporation may deem wise and proper.

3. To make advances or loans with or without security to the extent permitted by law.

4. To engage in the business of designing, building, erecting, constructing, purchasing, leasing or otherwise acquiring, holding, owning, maintaining, operating, transporting, remodelling, developing, improving, altering, repairing, leasing, mortgaging, pledging, selling, conveying, exchanging or otherwise disposing of dwelling houses, garages, stores, offices, plants, depots, factories, mills, storehouses, warehouses, laboratories, hotels, restaurants, laundries, ice plants, machine shops, wharves, piers, docks and other buildings, structures or places useful in connection

with the business of the Corporation either on its own behalf or in concert or association with one or more persons, firms, partnerships, associations or corporations, and in connection therewith using or otherwise employing ships, vessels, boats, automobiles, trucks, aircraft or other vehicles for transportation and any and all necessary engines, boilers, machinery, appliances, tools and equipment.

5. As far as permitted by law, to act as agent, representative or attorney-in-fact in any capacity or for any repairs of any trust, corporation or association, foreign or domestic, or any firm or individual or to designate any individual, firm, trust, corporation or association, foreign or domestic, to act or carry on the duties of agent, representative or attorney in any capacity or for any purpose for the Corporation.

6. To acquire by purchase, underwriting, subscription, participation in syndicates or otherwise become interested in, invest in, hold, sell, exchange, mortgage, pledge, hypothecate or otherwise dispose of, turn to account or reading upon, all forms of securities, including notes, evidences of indebtedness, certificates of interest, shares of stock, bonds, debentures, scrip and other rights, interests and obligations, and to deal in and with the same, and to loose in exchange thereafter, or in payment thereof, its own stocks, bonds, or other obligations or securities, or otherwise, pay therefor, or to acquire the same in a lawful manner without any such exchange or other payment; to exercise in interpret thereof any and all rights, powers and privileges of individual ownership or interest therein, including the right to vote thereon for any and all purposes, and to consent or otherwise act with respect thereto; to do any and all acts and things for the preservation, protection, improvement and improvement in value of such securities or designed to accomplish any such purposes

to aid by loan, subsidy, guaranty, or in any other manner those issuing, creating, or responsibile for such securities.

7. To make and enter into any guaranty respecting payment and performance of bonds, mortgages, debentures and other like securities, contracts, obligations, choses in action, interest, dividends, rents, earnings, profits, premiums, credits, payments or transfers of property of any kind to the extent permitted by the laws applicable to this Corporation.

8. To search for, prospect and explore for, and bore, drill and mine for coal, oils, gas and all kinds of ores, metals and minerals, and to locate mining claims and lodes in, and to record the same pursuant to the mining laws of the United States of America or any state or territory thereof or other countries and to mill, process, convert, produce, refine, transport and prepare for market or otherwise produce and deal in coal, oils, gas and all kinds of ores, metals and minerals in the products or by-products thereof, or to purchase or otherwise acquire, hold, own, exchange, sell or otherwise dispose of, mortgage, hypothecate and deal in the same and in mineral lands, surface or subsurface, timber lands, water and water rights and in interests and rights therein of all kinds, and to work, explore, operate and develop the same, and carry on the business of mining in all its branches.

9. To act as agent, broker or representative for insurance companies, individuals or associations in all matters pertaining to the business of insurance; to act as intermediary in the treaties of reinsurance agents and brokers; to solicit and place insurance; to adjust losses and to appraise property; generally to act as insurance agent and agent for insurance companies in soliciting and receiving applications for title, fire, casualty, plate glass, boiler, elevator, burglary, rent, marine and credit insurance

and all other kinds of insurance, the collection of premiums, and doing such other business as may be delegated to agents by such companies; and to do all things in connection with or in relation to the business of insurance or the representation of insurance companies as it may lawfully undertake to do and perform in conducting and carrying on a general insurance agency and brokerage business.

10. To acquire in any lawful manner and to furnish information, statistics, facts and circumstances of or relating to or affecting the business, capital, debt, solvency, credit, responsibility, financial and commercial condition and standing of any and all individuals, firms, associations and corporations engaged in or connected with any business, occupation, industry or employment, to persons, firms, partnerships, corporations and associations, and to dispose of, sell, lend, pledge, hire and use in any and all lawful ways all such information, statistics, facts and circumstances so obtained and acquired; and to provide intangible marketing assistance to any person, firm, partnership, corporation and association relating to regional housing conditions, products, improvement, government policies and marketing programs which might be obtained by this corporation through its business contacts with dealers, builders, mortgage investors, government housing agencies, home building associations and others.

11. To manufacture, produce, buy or otherwise acquire, hold, own, mortgage, pledge, sell or otherwise dispose of, import, export, distribute, and to make consignments or bailments of, and generally to deal in and with, either as principal, factor, agent or otherwise, goods, wares, merchandise and personal property of every kind and description both at wholesale or retail and upon commission or otherwise; to carry on a general manufacturing, trading,

mercantile, commercial and industrial business, or any part thereof, in any part of the world.

12. To apply for, obtain, register, purchase, lease or otherwise acquire, hold, own, use, operate, introduce, sell, assign or otherwise dispose of any and all patents, copyrights, trade-marks and trade names, and any and all inventories, improvements, apparatuses, appliances, formulas, and processes used in connection with or secured under letters patent of the United States of America, or of any other nation, country or government, or otherwise, and to use, exercise or develop, and to take or grant licenses in respect of or otherwise turn to account, any such patents, copyrights, trade-marks, trade names, inventions, improvements, apparatuses, appliances, formulas, processes, and the like, or any property or information so acquired.

13. To acquire all or any part of the good will, rights, property and business of a person, entity, partnership, association or corporation heretofore or hereafter engaged in any business similar to any business which the Corporation has power to conduct; to pay for the same in cash or in stock, bonds or other obligations of the Corporation or otherwise; to hold, utilize and in any manner dispose of the whole or any part of the rights or property so acquired and to assume in connection therewith any liabilities of any such person, entity, partnership, association or corporation and to conduct in a lawful manner the whole or any part of the business thus acquired.

14. To act as collecting agent for all persons and corporations whatsoever for the recovery, enforcement and collection of accounts, bills, debts, dues, demands and obligations and claims of all kinds, and to take assignments of claims, notes, accounts receivables and other evidences of indebtedness, and to sue therefor in its own name, unless prohibited by law, and to establish, maintain and

conduct a general collection business for recovery, enforcement and collection of accounts, bills, debts, dues, payments, obligations and claims.

15. To merge or consolidate with any corporation as may be permitted by law and to cause to be formed, consolidated, merged, reorganized or liquidated, and to promote, take charge of and aid in any way permitted by law the formation, consolidation, merger, reorganization or liquidation of, any corporation, association, firm or entity.

16. To enter into, make, perform and carry out contracts of every kind and description for any lawful purpose pertaining to the business of the Corporation, without limit as to amount, with any person, firm, association, corporation, municipality, county, state, body politic, or government or colony or dependency thereof.

17. To the extent permitted by law, to borrow or raise moneys, with or without security, for any of the purposes of the Corporation, and, from time to time, without limit as to the amount, to make, accept, endorse, guarantee, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable instruments and evidences of indebtedness of all kinds, and to secure the payment of any thereof and of the interest thereon by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the Corporation, whether at the time owned or thereafter acquired, and to sell, pledge, mortgage, hypothecate or otherwise dispose of any bonds, stocks, evidences of indebtedness, other obligations or property, real or personal of the Corporation for its corporate purposes.

18. To the extent permitted by law, to purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would

cause any impairment of its capital; and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

19. To have one or more offices and places of business either within or without the State of Delaware in addition to the principal office in said State, to carry on any and all of its operations and business, and without restriction or limit as to amount, to purchase, or otherwise acquire, hold, own, mortgage, sell, convey or otherwise dispose of real and personal property of every class and description, in any of the states, districts, territories or colonies of the United States, in the Dominion of Canada and any and all other foreign countries, subject to the laws of such state, district, territory, colony or country.

20. To conduct and carry on any of the foregoing objects and purposes herein enumerated through, or by means of, investment in subsidiaries or in the stock, securities or other evidences of interest in corporations, associations, partnerships or trust estates engaged in carrying on or conducting any one or more of the business or enterprises which the Corporation is authorized to conduct and carry on hereunder.

In general, to carry on a business not contrary to the laws of Delaware, and to have and exercise all of the powers conferred by the laws of Delaware upon corporations formed thereunder; and to do any and all of the acts and things herein set forth to the same extent as natural persons could do, and in any part of the world, as principal, factor, agent, contractor, or otherwise, either alone or in company with any person, trustee, factor, entity, syndicate, partnership, association, corporation or other organization.

To do everything necessary, proper, advisable or convenient for the accomplishment of any of the purposes or

the attainment of any of the objects or the furtherance of any of the powers herein set forth, either alone or in association with other corporations, firms or individuals, and to do every other act and thing incidental thereto or connected therewith, provided the same be not forbidden by the laws of Delaware and provided further that the business of the Corporation will not be in conflict with nor such as is prohibited by Title 18, United States Code, Section 709 and Chapter 645, Section 1, 62 Statutes at Large 733.

The foregoing clauses of this Article THIRD shall be construed as powers as well as objects and purposes, and the matters expressed in each clause shall, unless otherwise expressly provided, be in no wise limited by reference to or inference from the terms of any other clause (or any other matter within the same clause), but shall be regarded as independent objects, purposes and powers; and the enumeration of specific objects, purposes and powers shall not be construed to limit or restrict in any manner the meaning of general terms or the general powers of the Corporation, nor shall the expression of one thing be deemed to exclude another not expressed, although it be of like nature.

Nothing herein contained shall be construed as authorizing the Corporation to possess the power of issuing bills, notes or other evidences of debt for circulation as money, or the power of carrying on the business of receiving deposits of money, or the business of buying gold and silver bullion or foreign coins, or the business of banking. Nothing herein contained shall be construed as giving the Corporation any rights, powers or privileges not permitted to it by law but the occurrence within any of the foregoing clauses of this Article THIRD of any purpose, power or object prohibited by the laws of the State of Delaware, or of any

other state or of any district, territory, colony, dependency or foreign country in which the Corporation may carry on business shall not invalidate any other purpose, power or object not so prohibited, by reason of contiguity or apparent association therewith.

FOURTH: The amount of Capital Stock of the Corporation shall be Five Million Dollars ($5,000,000), consisting of Fifty Thousand (50,000) shares of Capital Stock of the par value of One Hundred Dollars ($100) each, all of which shall be of the same class.

The Capital Stock of the Corporation may be issued by the Corporation from time to time for such consideration as may be fixed by the Board of Directors; provided, however, that the consideration so fixed with respect to any of such shares shall be at least equal to the par value thereof.

The Capital Stock of the Corporation may be increased or decreased, in the manner provided by law, by the affirmative vote of the holders of a majority of the Capital Stock of the Corporation.

No holder of any of the shares of the Capital Stock of the Corporation shall be entitled as of right to purchase or subscribe for any unissued stock of any class of the Corporation, whether authorized herein or pursuant to any amendment hereof, or bonds, certificates of indebtedness, debentures or other securities, convertible into stock of the Corporation or carry any right to purchase stock of any class, but any such unissued stock or other securities convertible into stock of the Corporation, or carrying any right to purchase stock, may be issued and disposed of pursuant to resolution of the Board of Directors to such persons, firms, corporations, or associations, and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its discretion.

The Corporation, upon vote of the Board of Directors, from time to time may grant rights or options to subscribe for, purchase or otherwise acquire any shares of stock of the Corporation of any class now or hereafter authorized or any bonds or other obligation or securities of the Corporation. Such rights or options (a) may relate to such amounts of any class or classes of said securities, may be exercisable within such periods, or without limit as to time, at such price or prices and otherwise upon such terms and conditions and may confer such rights and privileges, (b) may be granted for such consideration and on such terms and conditions to such corporations, associations, partnerships, firms, individuals or others or to the bearers or registered holders of warrants or other instruments evidencing such rights or options, and (c) may be granted separately or in connection with the issuance of any bonds, debentures, notes or other evidences of indebtedness or shares of stock of the Corporation of any class now or hereafter authorized, or otherwise, all as the Board of Directors may determine. No vote or consent of the stockholders of any class or classes shall be necessary to authorize any such action of the Board of Directors. Nothing contained in this paragraph shall be deemed to authorize the issuance of shares of Capital Stock of the Corporation of any class having a par value for a consideration less than the par value thereof.

The minimum amount of capital with which the Corporation shall commence business is One Thousand Dollars ($1,000).

FIFTH: The names and places of residence of each of the Incorporators are as follows:

Name	Place of Residence
Philip J. Cullen	Rosedale, New York
William R. Badger	South Orange, New Jersey
William A. Hamlin	Glen Ridge, New Jersey

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: The private property of the stockholders of the Corporation shall not be subject to the payment of corporate debts to any extent whatever.

EIGHTH: The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation, and it is expressly provided that the same are intended to be in furtherance and not in limitation or exclusion of the powers conferred by statute:

1. The number of directors of the Corporation shall be fixed and may be altered from time to time as may be provided by the By-Laws; provided, however, that the number of directors shall not be less than three. The directors of the Corporation do not need to be stockholders thereof. Vacancies and newly created directorships resulting from an increase in the authorized number of directors may be filed by a majority of the directors then in office, though less than a quorum, or by the stockholders entitled to vote at an annual or special meeting, as shall be provided in the By-Laws.

2. Both stockholders and directors shall have power, if the By-Laws of the Corporation so provide, to hold their meetings either within or without the State of Delaware, to have one or more offices in addition to the principal office in the State of Delaware, and to keep the books of the Corporation (subject to the provisions of the statutes) outside of the State of Delaware at such places as, from time to time, may be designated by them.

3. Directors may receive such compensation for their services as directors, and as members of committees, as shall be fixed either by the By-Laws or from time to time by resolution of the Board of Directors, or of the Executive Committee. The Board of Directors shall have power

in its discretion also to provide for and to pay directors rendering unusual or exceptional services to the Corporation special compensation appropriate to the value of such services.

4. The Board of Directors shall have the power, by resolution or resolutions passed by a majority of the total number of directors constituting the whole Board of Directors, to designate one or more committees, each committee to consist of two or more directors of the Corporation, which, to the extent provided in said resolution or resolutions or in the By-Laws of the Corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and which may have power to authorize the seal of the Corporation to be affixed to all papers which may require it, such committee or committees to have such name or names as may be stated in the By-Laws of the Corporation or as may be determined from time to time by resolution adopted by the Board of Directors.

5. The Board of Directors shall have power, from time to time, to fix and determine and vary the amount of the working capital of the Corporation, and to direct and determine the use and the disposition of any surplus over and above the capital stock paid in, and in its discretion the Board of Directors may use and apply any such surplus and other funds of the Corporation legally available therefor, in purchasing and acquiring bonds or other obligations of the Corporation, or shares of its own Capital Stock, to such extent and in such manner and upon such terms as the Board of Directors shall deem expedient, but any shares of capital stock so purchased and acquired may be resold, unless such shares shall have been retired in

the manner provided by law for the purpose of decreasing the Corporation's Capital Stock.

6. No contract or other transaction between the Corporation and any other firm, association or corporation shall be affected or invalidated by the fact that any one or more of the directors or officers of the Corporation is, or are, interested in or is a member, director, officer or stockholder, or are members, directors, officers of stockholders of such other firm, association or corporation, and a director or directors, officer or officers, individually or jointly, may be a party or parties to, or may be interested in a contract or transaction of the Corporation, or in which the Corporation is interested, and no contract, act or transaction of the Corporation with a person, firm, corporation or association shall be affected or invalidated by the fact that a director or directors, and/or officer or officers of the Corporation is a party or are parties to, or interested in such contract, act or transaction, or in any way connected with such person, firm, corporation or association, and each and every person who may become a director or officer of the Corporation is hereby relieved, as far as is legally permissible, from any disability which might otherwise prevent him from contracting with the Corporation for the benefit of himself or of any firm, corporation or association in which he may in any way be interested.

7. To the extent permitted by law, the Board of Directors shall have power to (a) issue or cause to be issued, authorized stock of the Corporation, also its bonds, debentures or other obligations secured or unsecured, in payment of property purchased or acquired, or for any other lawful consideration; (b) mortgage, pledge, hypothecate or otherwise encumber all or any of the property of the Corporation, whether real, personal or mixed; (c) declare

and pay dividends upon the shares of Capital Stock of the Corporation out of any assets of the Corporation legally available therefor; and (d) set aside out of its assets available for dividends such sum or sums as the Board of Directors in its absolute discretion may deem proper as a reserve or reserves to meet contingencies for maintaining or increasing the property or business of the Corporation, or any other purpose it may deem conducive to the best interests of the Corporation; provided, however, that the Board of Directors in its discretion at any time may increase, diminish or abolish any such reserve in the manner in which it was created.

8. Subject always to such By-Laws as may be adopted from time to time by the stockholders, the Board of Directors is expressly authorized to adopt, alter, amend, and repeal the By-Laws of the Corporation, but any By-Laws adopted by the Board of Directors may be later amended or repealed by the stockholders.

9. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation in the manner now or hereinafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to the reservation.

10. Each director, each officer, each former director and each former officer of the Corporation, and each person who shall have served at the request of the Corporation as a director or officer of another corporation in which this Corporation owns shares of Capital Stock, or of which it is a creditor, shall be indemnified by the Corporation against the expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of his doing or having been a director or officer of the Corporation, or of such other corporation, except in rela-

tion to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty. Each person who shall serve as a director or officer of the Corporation, or of such other corporation, shall be deemed to be doing so in reliance upon such indemnification. Such indemnification shall not be deemed exclusive of any other rights to which those indemnified may be entitled as a matter of law or under any by-law, agreement, vote of stockholders or otherwise. This provision shall not be construed as a limitation upon the right of the Corporation to exercise its general power to enter into a contract or undertaking of indemnity with any director, officer, agent or employee in any proper case not provided for herein.

NINTH: Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrange-

ment and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 28th of January, 1954.

/s/ Philip J. Cullen
/s/ William R. Badger
/s/ William A. Hamlin

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
U. S. STEEL HOMES CREDIT CORPORATION

Adopted in accordance with the provisions of Sections 242 and 228 of the General Corporation Law of the State of Delaware

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We, W. H. LANG, President, and B. L. RAWLINS, Secretary of U. S. Steel Homes Credit Corporation, a corporation existing under the laws of the State of Delaware, do hereby certify under the seal of the said corporation as follows:

FIRST: That on the 1st day of August, 1961, the written consent of all of the Stockholders entitled to vote

of U. S. Steel Homes Credit Corporation was given, in accordance with Section 228 of the General Corporation Law of the State of Delaware, to the proposed amendment to the Certificate of Incorporation.

SECOND: That the following is a true and correct copy of the amended first paragraph of Article FOURTH of the Certificate of Incorporation as consented to in writing by all of the Stockholders as aforesaid:

"FOURTH: The amount of Capital Stock of the Corporation shall be Ten Million Dollars ($10,000,000), consisting of One Hundred Thousand (100,000) shares of Capital Stock of the par value of One Hundred Dollars ($100) each, all of which shall be of the same class."

THIRD: That such amendment has been duly adopted in accordance with the provisions of Sections 242 and 228 of the General Corporation Law of the State of Delaware and that the capital of the corporation will not be reduced under or by reason of said amendment.

IN WITNESS WHEREOF, we W. H. LANG, President, and B. L. RAWLINS, Secretary of U. S. Steel Homes Credit Corporation, have signed this certificate and caused the corporate seal of the corporation to be hereunto affixed this 1st day of August, 1961.

/s/ W. H. Lang
President

/s/ B. L. Rawlins
Secretary

(Corporate Seal)

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

BE IT REMEMBERED, that on this 1st day of August, 1961, personally came before me, WILLIAM J. DICKSON,

Affidavit of Kenneth L. Anderson—July 15, 1966

a Notary Public in and for the County and State aforesaid, duly commissioned and sworn to take acknowledgments or proofs of deeds, W. H. LANG, President of U. S. Steel Homes Credit Corporation, a corporation of the State of Delaware, the corporation described in the foregoing Certificate, known to me personally to be such, and he the said W. H. LANG as such President, acknowledged the said certificate to be his act and deed and made on behalf of said corporation; that the signatures of said President and of the Secretary of said corporation to said foregoing certificate are in the handwriting of the said President and of the Secretary of said Corporation, respectively, and that the seal affixed to said certificate is the common or corporate seal of said corporation, and that his act of sealing, executing, acknowledging and delivering the said certificate was duly authorized by the directors and with the written consent of the holders of record of all the shares of said corporation entitled to vote on an amendment to the certificate of incorporation of the corporation, at the time outstanding.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

/s/ William J. Dickson

WILLIAM J. DICKSON
Notary Public, State of New York
No. 30-6025500
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1962

(Notarial Seal)

BY-LAWS
OF
U. S. STEEL HOMES CREDIT CORPORATION
AS ADOPTED FEBRUARY 8, 1954

ARTICLE I.

Offices

SECTION 1. Principal Office — The principal office of the Corporation shall be located at No. 100 West Tenth Street, Wilmington, County of New Castle, State of Delaware; but the Board of Directors may, by resolution, change the location of the said principal office, from time to time, to any other place within the State of Delaware as provided by law.

SECTION 2. Other Offices — The Corporation shall also have an office at 71 Broadway, Borough of Manhattan, City and State of New York, and may also have such other offices, within or without the State of Delaware, as the Board of Directors may determine or as its business may require.

SECTION 3. Places where Books are to be Kept — The original or duplicate stock ledger, containing the names and addresses of the stockholders and the number of shares held by them, respectively, shall, at all times, be kept at the principal office of the Corporation in Delaware. Other books of the Corporation may be kept at such place or places, within or without the State of Delaware, as the Board of Directors may determine or as its business may require.

ARTICLE II.

Stockholders

SECTION 1. Place of Meetings — The annual meeting of stockholders shall be held at the office of the Corpo-

ration located at 71 Broadway, Borough of Manhattan, City and State of New York, which shall not be changed within sixty (60) days before the date of any such meeting. In the event of a change in the place of the annual meeting, without simultaneously changing the time of such meeting, a notice of such change of place shall be given to each stockholder at least twenty (20) days before the meeting in person or by letter mailed to his last post office address as the same appears on the records of the Corporation. If, however, there is a change made simultaneously in the time of such meeting, the notice of the change of place shall be given to each stockholder as provided in Section 2 of this Article II.

Special meetings of stockholders may be held either at the said office of the Corporation in New York, New York, or at such other place as the Board of Directors may, from time to time, by resolution appoint.

SECTION 2. Annual Meeting — Time and Purpose — The annual meeting of the stockholders shall be held at 11:30 o'clock A.M., on the first Thursday in March in each year if not a legal holiday at the place held, but if a legal holiday then on the next succeeding Thursday not a legal holiday, for the purpose of electing directors. There may also be considered and transacted at an annual meeting without special notice, any business which under the laws of Delaware may properly be brought before a general or annual meeting of stockholders; and if due notice be given as required by the laws of Delaware or these By-Laws, any business may be transacted at an annual meeting which under the laws of Delaware might be transacted after such notice.

The time fixed in this Section for the annual meeting shall not be changed within sixty (60) days before the date of any such meeting. In the event of a change in the

time of the annual meeting, notice of such change shall be given to each stockholder, in person or by letter mailed to his last known address as the same appears on the records of the Corporation, as follows:

(a) If the new date of meeting as changed is subsequent to the date which has been changed, the notice of such change shall be given at least twenty (20) days before the date theretofore fixed for such meeting.

(b) If the new date of the meeting as changed is prior to the date which has been changed, the notice of such change shall be given at least twenty (20) days before such new date of meeting.

SECTION 3 Special Meetings — A special meeting of stockholders may be held whenever called (a) by the Chairman of the Board of Directors or (b) by the President or (c) by resolution of the Board of Directors, or (d) when permitted by the laws of Delaware, in writing signed by the holder or holders of not less than a majority of all the outstanding shares of stock of the Corporation.

SECTION 4. Notice of Meetings — Except as in Sections 5, 6 and 9 of this Article II otherwise provided, a written notice of every meeting of the stockholders shall be given to each stockholder of record, either by delivering such notice to him personally or by depositing same in the post office postage prepaid and properly addressed to him at his address as the same appears on the records of the Corporation.

The notice of an annual meeting shall state the time, place and the purpose or purposes thereof; and if any business is to be transacted thereat which under the laws of Delaware can only be transacted pursuant to specific notice, due notice thereof shall be given.

The notice of a special meeting shall state the time, place, and specifically the purpose or purposes thereof, as

required by the laws of Delaware. Except as permitted by Sections 5 and 6 of this Article II, no business which is required to be stated in the notice under the laws of Delaware or these By-Laws shall be transacted at any meeting of the stockholders unless so stated in the notice.

The notice of each meeting of the stockholders shall be given at least two (2) days before the day of the meeting, except when a longer period is required by the laws of Delaware or these By-Laws for any particular purpose.

The notice of each meeting of the stockholders shall be given by, or at the direction of, the Secretary of the Corporation.

SECTION 5. Meetings Held on Waivers—Anything in these By-Laws to the contrary notwithstanding, any meeting of the stockholders may be held without call or notice if the stockholders not present and entitled to vote thereat shall waive notice thereof in writing, either before or after the holding of the meeting. However, no business in respect of which notice is required to be given under the laws of Delaware or these By-Laws shall be considered at any meetings held without notice, except upon the written consent of all the stockholders.

SECTION 6. Meetings at which all Stockholders are Present — Anything in these By-Laws to the contrary notwithstanding if at any meeting all the stockholders are present in person or by proxy, any business may be transacted, even though no notice of such meeting shall have been given or, if given, such business shall not have been stated in the notice, provided that the written consent of all the stockholders to the consideration of such business is first obtained.

SECTION 7. Action without Meeting of Stockholders — Anything in these By-Laws to the contrary notwithstanding, any action required by the laws of Delaware or

these By-Laws to be taken at a meeting of the stockholders may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the stockholders entitled to vote with respect to the subject matter thereof.

SECTION 8. Quorum — The presence, in person or by proxy, of the holder or holders of a majority of all the outstanding shares of stock of the Corporation entitled to vote at any meeting of the stockholders, exclusive of the shares owned by the Corporation, if any, shall constitute a quorum.

SECTION 9. Adjourned Meetings — In the event that there is not represented at any meeting of the stockholders sufficient number of shares of stock to constitute a quorum, the stockholders present in person or by proxy, by the affirmative vote of the holder or holders of a majority of the shares of stock represented at the meeting, may adjourn if from time to time, but to the same place at which the meeting so adjourned had been called, until a quorum is obtained; and no further notice of such meeting need be given other than by announcement at the meeting so adjourned. At any such adjourned meeting at which a quorum, but less than all, of the stockholders shall be present only such business may be transacted as might have been legally transacted at the meeting as originally called.

SECTION 10. Voting — At all stockholders' meetings each stockholder shall be entitled to one vote for each share of stock held by him as shown by the books of the Corporation; provided, that no share of stock shall be voted at any election of directors which has been transferred on the books of the Corporation within twenty (20) days next preceding such election of directors.

All elections of directors shall be had by a plurality vote and all other questions decided by the vote of the

holder or holders of a majority of the shares of stock represented at the meeting and entitled to vote, except as for any particular purpose may be otherwise required by the laws of Delaware or the Certificate of Incorporation.

Ballots — The voting for directors shall be by ballot but the voting upon any other matter shall be by ballot only when required by the laws of Delaware.

SECTION 11. Proxies — At any meeting of the stockholders any shares of stock of this Corporation may be voted by proxy appointed by an instrument in writing subscribed by the stockholder or his duly authorized attorney; but no proxy shall be valid after three years from its date unless a longer period is provided therein.

SECTION 12. List of Stockholders — At least ten (10) days before every election of directors the Secretary shall make or cause to be made a complete list, in alphabetical order, of all the stockholders entitled to vote at said election. Such list shall be open at the place where said election is to be held for the said ten (10) days, to the examination of any stockholder, and shall be produced and kept at the time and place of election during the whole time thereof, and subject to the inspection of any stockholder who may be present.

SECTION 13. Organization, Chairman and Secretary of Meetings — The Chairman of the Board of Directors, or in his absence the President of the Corporation, or in their absence a Vice-President, shall call all meetings of the stockholders to order and shall act as Chairman thereof. In the absence of the Chairman of the Board, and of the President and of a Vice-President, the stockholders present in person or by proxy and entitled to vote thereat, by the affirmative vote of the holder or holders of a majority of the shares of stock represented at the meeting and entitled to vote, may elect as Chairman of the meeting any stockholder or the duly authorized proxy of a stockholder.

The Secretary of the Corporation, or in his absence an Assistant Secretary, or in the absence of both, a person appointed by the Chairman of the meeting shall act as Secretary of the meeting and shall keep and make a record of the proceedings thereat.

ARTICLE III.

Directors

SECTION 1. Number, Term of Office and Qualification — The affairs of the Corporation shall be managed and its corporate powers exercised by a Board of Directors consisting of such number of directors as from time to time may be fixed by resolution adopted by a majority of the directors then in office or by the stockholders; provided that the number of directors so fixed shall not be less than three (3). Directors need not be stockholders. The Board of Directors may adopt such rules and regulations for the conduct of their meetings and the management of the affairs of the Corporation as they may deem proper, not inconsistent with the laws of the State of Delaware, the Certificate of Incorporation or these By-Laws. Unless his office is sooner terminated by death or any other cause, each director shall hold office until the next annual meeting of the stockholders following his election or until his successor shall have been elected and shall qualify.

SECTION 2. Removal of Directors — At any meeting of the stockholders called for that purpose, any one or more of the directors may be removed for cause at any time before the expiration of the term for which he or they shall have been elected by the affirmative vote of the holder or holders of a majority of all the outstanding shares of stock of the Corporation.

SECTION 3. Vacancies — If any vacancy occurs in the Board of Directors through death, resignation, dis-

qualification, removal or any other cause whatsoever, the remaining directors, provided there are at least three (3) remaining directors, may, by the affirmative vote of the majority thereof, fill such vacancy or vacancies. In the event that there are less than three (3) remaining directors, such vacancy or vacancies shall be filled by the stockholders at a meeting called for that purpose. In the event and until the filling of any such vacancy or vacancies, the remaining directors, provided there are at least three (3) such remaining directors, shall constitute the Board of Directors of the Corporation.

Increase in Number of Directors — In case of an increase in the number of directors the new director or directors may be elected by the existing Board of Directors or by the stockholders at their next annual meeting or at a special meeting called for that purpose. Until the new director or directors shall have been so elected and qualify, the directors then in office, provided there are at least three (3) such directors, shall consistute the Board of Directors of the Corporation.

SECTION 4. Place of Meetings — The Directors may hold their meetings either at the office of the Corporation in New York, New York, or at such other place or places within or without the State of Delaware as the Board of Directors may by resolution appoint.

SECTION 5. Time of Meetings — Regular meetings of the Board of Directors shall be held at such times as may be fixed, and with or without notice as may be provided, by resolution of the Board of Directors.

Special meetings of the Board of Directors shall be called and held whenever requested by (a) the Chairman of the Board of Directors or (b) the President or (c) any two members of the Board of Directors.

SECTION 6. Notice of Meetings — Except as in Sections 5, 7 and 9 of this Article III otherwise provided, a written notice of every meeting of the Board of Directors shall be given to each director either by delivering such notice to him personally or by depositing same in the post office, postage prepaid and properly addressed to him at his last known address, at least two (2) days before the day set for the meeting; or by telegraphing the same to him not less than twenty-four (24) hours before the hour set for the meeting. Such notice shall state the time and place of the meeting, and, if any extraordinary business is to be considered thereat, shall also state the purpose or purposes of the meeting.

The notice of each meeting of the Board of Directors shall be given by, or at the direction of, the Secretary of the Corporation.

SECTION 7. Meetings held on Waivers or by Presence of all the Directors — Anything in these By-Laws to the contrary notwithstanding, any meeting of the Board of Directors may be held at any time and place, without call or notice, if all the directors are present; or if those not present shall have waived notice thereof in writing, either before or after the meeting, provided that a quorum is present. At any such meeting any and all general or ordinary business may be transacted. There may also be transacted at such meeting any extraordinary business which might be transacted after due notice, provided that no director present objects to the consideration thereof and that consent to said consideration shall have been specifically given in the waivers of the directors not present at the meeting.

SECTION 8. Quorum — At any meeting of the Board of Directors three or more of the directors then in office shall constitute a quorum and the act of a majority of the

directors present at any meeting at which there is a quorum shall be the act of the Board of Directors.

SECTION 9. Adjournment — If at any meeting of the Board of Directors there shall be present less than a quorum, a majority of those present may adjourn the meeting from time to time and from place to place until a quorum is obtained and no further notice of such meeting need be given other than by announcement at the meeting which shall be adjourned. At any such adjourned meeting at which a quorum but less than all the directors shall be present, only such business may be transacted as might have been transacted at the meeting as originally called.

SECTION 10. Organization, Chairman and Secretary of Meetings — The Chairman of the Board of Directors or in his absence the President of the Corporation or in his absence the Vice-President, and if there is more than one Vice-President then any Vice-President, or in their absence a director chosen by those present, shall call all meetings of the Board of Directors to order and shall act as Chairman of the meeting.

The Secretary of the Corporation or in his absence an Assistant Secretary, and if there is more than one Assistant Secretary then any Assistant Secretary, or in their absence a person appointed by the Chairman of the meeting, shall act as Secretary of the meeting and shall keep and make a record of the proceedings thereat.

SECTION 11. Compensation of Directors — The Board of Directors by resolution may fix fees to be paid directors, or any one or more of them, for his or their services as such. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent or otherwise, and receiving compensation therefor.

ARTICLE IV.

Committees

SECTION 1. Executive Committee and Powers Thereof — The Board of Directors may, by resolution or resolutions, passed by a majority of the whole Board, designate an executive committee, to consist of not less than three of the directors, as the Board may from time to time determine. The executive committee shall have and may exercise, when the Board is not in session, all the powers of the Board of Directors, in the management of the business and affairs of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it, and such other powers as the Board of Directors may from time lawfully delegate; but the executive committee shall not have power to fill vacancies in the Board, or to change the membership of or to fill vacancies in the said committee, or to make or amend by-laws of the Corporation. The Board shall have the power at any time to designate the chairman of the executive committee, to change the membership thereof, to fill vacancies in it, or to dissolve it.

SECTION 2. Other Committees — The Board of Directors may also, by resolution or resolutions, passed by a majority of the whole Board, designate one or more other committees, each such committee to consist of two or more of the directors of the Corporation, which, to the extent provided in said resolution or resolutions, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may have power to authorize the seal of the Corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors.

SECTION 3. Reports: Records — All acts and resolutions of any committee shall be recorded in a minute book to be kept by it and reported to the Board of Directors at its next succeeding regular meeting, and shall be subject to the approval of or revision by the Board of Directors, but no acts or rights of third parties shall be affected by any such revision. Each committee shall fix its own rules of procedure and shall meet where and as provided by such rules at stated times or on notice to all by any one of their number or by resolution of the Board of Directors, but in every case the presence of a majority of the members shall be necessary to constitute a quorum. In every case the affirmative vote of a majority of the members of each committee shall be necessary for the adoption of any resolution. The Secretary of the Corporation shall act as secretary of each committee, or in his absence or incapacity such committee may appoint a secretary to act in his place. The Board of Directors by resolution or resolutions may fix the compensation of members of each committee for their services as such, but unless so fixed the members of each committee shall not be entitled to any compensation for their service as such.

ARTICLE V.

Officers

SECTION 1. Election — As soon as conveniently may be after their election at the annual meeting of the stockholders the directors shall elect the Executive Officers of the Corporation.

SECTION 2. Executive Officers — The Executive Officers of the Corporation shall be a Chairman of the Board, a President, one or more Vice-Presidents, a Secretary, a Treasurer and a Comptroller, none of whom, except the Chairman of the Board and the President, need be a director of the Corporation. Two or more offices, other than the

offices of President and Secretary, Chairman of the Board and Treasurer, and Treasurer and Comptroller, may be held by the same person.

Other Officers and Agents — The Board of Directors may also elect one or more Assistant Secretaries, one or more Assistant Treasurers, one or more Assistant Comptrollers and such other officers as it may deem necessary or advisable for the proper conduct of the business of the Corporation. The Board of Directors and, subject to the supervision and control of the Board of Directors, each of the Executive Officers may also appoint such officers or agents as it or he may deem necessary or advisable for the proper conduct of the business of the Corporation.

SECTION 3. Terms of Office and Removal — Unless sooner removed from office as in this Section provided, the Executive Officers shall hold office until their respective successors have been elected and shall qualify. Any officer or agent of the Corporation elected or appointed by the Board of Directors may be removed at any time by the Board of Directors; and any officer or agent appointed by an Executive Officer may be removed at any time either by the Board of Directors or by such Executive Officer.

SECTION 4. Powers, Authorities and Duties of Officers — Subject to the control of the Board of Directors, the several officers of the Corporation, in addition to the powers and authorities conferred and duties imposed upon them elsewhere in these By-Laws, shall have and shall be charged with the powers, authorities and duties set forth in the following sections of this Article V.

SECTION 5. Powers, Authorities and Duties of the Chairman of the Board — The Chairman of the Board shall preside at all meetings of the Board of Directors and at all meetings of the stockholders and shall be the chief executive officer. He shall have supervisory authority over the fi-

nances and general policy and business of the Corporation and shall have such other powers and duties as may from time to time be prescribed by the Board of Directors.

SECTION 6. Powers, Authorities and Duties of the President — The President

a. Shall be the chief administrative officer of the Corporation and shall have general charge of all the business and affairs of the Corporation.

b. He shall keep the Board of Directors and the Executive Committee fully informed and shall freely consult with the Chairman of the Board concerning the business and affairs of the Corporation.

c. He shall have authority, including the right to delegate such authority for the purposes of any one meeting to any Vice-President of the Corporation, on behalf of this Corporation either to attend in person, or to appoint by written instrument a proxy or proxies to attend, and represent this Corporation at all meetings of the stockholders of any corporation in which this Corporation may hold any stock and at such meetings to vote and exercise any and all other rights and powers incident to the ownership of such stock.

d. In the absence of the Chairman of the Board he shall have the right to call all meetings of the stockholders and of the Board of Directors to order and shall act as Chairman thereof.

SECTION 7. Powers, Authorities and Duties of Vice-Presidents — If the President be absent or for any reason be unable to act, the Vice-President, or if there is more than one Vice-President, then any Vice-President may perform the duties and exercise the powers and authorities of the President, unless a particular Vice-President shall have been designated by the President or the Board of Directors

for that purpose. The Vice-President, or if there is more than one Vice-President then each Vice-President, shall also have such other powers and authorities and perform such other duties as may be conferred upon or assigned to him by the President or the Board of Directors and such as are conferred upon or assigned to him elsewhere in these By-Laws.

SECTION 8. Powers, Authorities and Duties of the Secretary — The Secretary

a. Shall give and serve, or cause to be given and served, all notices of the Corporation falling within the functions of his office.

b. He shall have custody and charge of, and shall be responsible for, the minute books and the stock ledger or stock records of the Corporation, and such other books, records and papers as usually pertain to the office of the secretary of a corporation.

c. He shall affix the corporate seal to any document of the Corporation and shall attest the same whenever such attestation is requisite or deemed advisable.

d. Whenever requested by the Chairman of the Board, the President or the Comptroller or any director or independent auditors designated by or under authority of the stockholders of the Corporation the Secretary shall exhibit his books and records to them or to any of them during business hours.

SECTION 9. Powers, Authorities and Duties of Assistant Secretaries — If the Secretary be absent or for any reason be unable to act, the Assistant Secretary, or if there is more than one Assistant Secretary then any Assistant Secretary, may perform the duties and exercise the powers and authorities of the Secretary, unless a particular Assistant Secretary shall have been designated by the Sec-

retary or the Board of Directors for that purpose. The Assistant Secretary, or if there is more than one Assistant Secretary then each Assistant Secretary, shall also have such other powers and authorities and perform such other duties as may be conferred upon or assigned to him by the Secretary or the Board of Directors and such as are conferred upon or assigned to him elsewhere in these By-Laws.

SECTION 10. Powers, Authorities and Duties of the Treasurer — The Treasurer

a. Shall have custody and charge of, and shall be responsible for, all the funds and securities of the Corporation which may have come into his hands.

b. He shall promptly collect, or cause to be collected, all moneys and accounts due to the Corporation, and he shall sign, or cause to be signed, all receipts and vouchers for payments made to the Corporation.

c. He shall, when necessary or proper, endorse on behalf of the Corporation for collection all checks, drafts, notes and other orders for payment of money, payable or belonging to the Corporation.

d. He shall make, or cause to be made, all payments for corporate purposes upon properly drawn checks, drafts, vouchers, requisitions or other orders for the payment of money of the Corporation, except as may be otherwise provided for payments to be made from any special or limited bank account which may have been established under and pursuant to Section 3 of Article VIII of these By-Laws.

e. He shall investigate and recommend to the Board of Directors depositaries for the funds of the Corporation.

f. He shall have authority over all matters of credit concerning the business of the Corporation.

g. He shall keep and maintain, or cause to be kept and maintained, full and accurate accounts of all moneys re-

ceived and paid out by him on account of the Corporation and of all financial transactions of the Corporation, in records satisfactory to the Comptroller.

h. He shall render to the Chairman of the Board, the President and to the Board of Directors, whenever requested by any one or more of them, an account of his transactions as Treasurer and of the financial condition of the Corporation.

i. Whenever requested by the Chairman of the Board or the President or the Comptroller or the Board of Directors or independent auditors designated by or under authority of the stockholders of the Corporation, he shall exhibit his books and accounts to them or to any of them during business hours.

j. He shall give a bond, in such form and in such amount and with such sureties as the Board of Directors may require and approve.

SECTION 11. Powers, Authorities and Duties of Assistant Treaurers — If the Treasurer be absent or for any reason be unable to act, the Assistant Treasurer, or if there is more than one Assistant Treasurer then any Assistant Treasurer, may perform the duties and exercise the powers and authorities of the Treasurer, unless a particular Assistant Treasurer shall have been designated by the Treasurer or Board of Directors for that purpose. The Assistant Treasurer, or if there is more than one Assistant Treasurer then each Assistant Treasurer, shall also have such other powers and authorities and perform such other duties as may be conferred upon or assigned to him by the Treasurer or the Board of Directors and such as are conferred upon or assigned to him elsewhere in these By-Laws.

Each Assistant Treasurer shall give a bond, in such form and in such amount and with such sureties as the Board of Directors may require and approve.

SECTION 12. Powers, Authorities and Duties of the Comptroller — The Comptroller shall be the principal officer in charge of the accounts of the Corporation and

a. Shall establish and maintain, or cause to be established and maintained, all accounting, including cost accounting, policies and the methods and procedures of carrying out such policies.

b. He shall be responsible for the design, installation, custody and operation of all accounting, including cost accounting, books, records and forms of the Corporation.

c. He shall prepare, or cause to be prepared, all checks, drafts and other orders for the payment of money for authorized disbursements, or for the transfer of funds, of the Corporation, except as may be otherwise provided in respect of any special or limited bank account under and pursuant to the provisions of Section 3 of Article VIII of these By-Laws. He shall not prepare or countersign, or permit the countersigning of, any such checks, drafts, or other orders for the payment of money of the Corporation if such payment is in excess of an amount properly authorized by any rule or regulation established by the Board of Directors or by any officer having authority to establish such rule or regulation.

d. He shall examine and/or audit, or cause to be examined and/or audited, all financial and business records and all receipts and disbursements of the Corporation, including all books and accounts of all officers and agents of the Corporation who are charged with the receipt and disbursements of money or material or who have jurisdiction over labor. He shall make, or cause to be made, such examination and/or audit with established regularity and as often as dictated by good business methods and practices.

e. He shall audit or investigate, or cause to be audited or investigated, any matter the audit or investigation of

which may be requested of him by or at the instance of the Chairman of the Board of Directors or the President.

f. He shall analyze and check, or cause to be analyzed and checked, and assist other officers of the Corporation in analyzing and checking, the policies and activities of the Corporation, as revealed by the records. He shall also assist other officers in determining future policies and plans by developing and interpreting facts and applying good business judgment to the conclusions to be deduced from such facts.

g. He shall prepare and interpret, or cause to be prepared and interpreted, all statistical records and reports and all financial statements and reports of the Corporation whether for internal or external use.

h. He shall establish and maintain, or cause to be established and maintained, budget control and the consolidation and coordination of budgets.

i. He shall take and evaluate, or cause to be taken and evaluated, all physical inventories and all matters relating thereto.

j. He shall be responsible for all matters relating to taxes and shall prepare and file, or cause to be prepared and filed, all tax returns and other papers relating to taxes.

k. He shall place and effect, or cause to be placed and effected, all insurance, including employees' indemnity bonds, in order adequately and properly to safeguard the properties and business of the Corporation and in accordance with policies established by the Board of Directors or by officers whose function it is to establish the same.

l. He shall determine, or cause to be determined, that all expenditures against appropriations are made pursuant to and in accordance with proper authorization and

properly accounted for, and shall have authority over the establishment and maintenance of proper and adequate records of authorized appropriations.

m. He shall be responsible for the approval of the auditing and accounting provisions of all contracts, leases and agreements of the Corporation and the maintenance of adequate records thereof.

n. He shall coordinate, or cause to be coordinated, the clerical and office systems and facilities throughout the Corporation.

o. He may delegate actual performance of any of his work to other departments in the interest of efficiency and economy. Such delegation will not, however, affect his responsibility for and/or authority over policies, methods or procedures or the accuracy and results of any work so delegated.

p. He shall render to the Board of Directors, whenever requested by it, an account of his transactions as Comptroller.

q. Whenever requested by the Chairman of the Board or the President or the Board of Directors or independent auditors designated by or under authority of the stockholders he shall exhibit his books and accounts to them or to any of them during business hours.

r. He shall give a bond, in such form and in such amount and with such sureties as the Board of Directors may require and approve.

SECTION 13. Powers, Authorities and Duties of Assistant Comptrollers — If the Comptroller be absent or for any reason be unable to act, the Assistant Comptroller, or if there is more than one Assistant Comptroller then any Assistant Comptroller, may perform the duties and exercise the powers and authorities of the Comptroller,

unless a particular Assistant Comptroller shall have been designated by the Comptroller or the Board of Directors for that purpose. The Assistant Comptroller, or if there is more than one Assistant Comptroller, then each Assistant Comptroller, shall also have such other powers and authorities and perform such other duties as may be conferred upon or assigned to him by the Comptroller or the Board of Directors and such as are conferred upon or assigned to him elsewhere in these By-Laws.

Each Assistant Comptroller shall give a bond, in such form and in such amount and with such sureties as the Board of Directors may require and approve.

SECTION 14. Vacancies — All vacancies in the offices mentioned in Section 2 of this Article V resulting from death, resignation or any other cause whatsoever shall be filled by the Board of Directors in respect of the officers or agents elected or appointed by the Board; and, subject to the supervision and control of the Board of Directors, by the Executive Officers in respect of those appointed by such Executive Officers.

SECTION 15. Fidelity Bonds — In addition to complying with the requirements elsewhere in these By-Laws in respect of any particular officer, every officer, agent or employee of the Corporation, who may receive, handle or disburse moneys for the account of the Corporation or who may have any of the Corporation's property in his custody or control or be responsible for its safety or preservation, shall at the direction of the Board of Directors or the Comptroller, give a bond, in such form and in such amount and with such sureties as the Board of Directors or the Comptroller may require and approve.

Every officer, agent or employee of the Corporation who shall give a bond to the Corporation pursuant to the

provisions of these By-Laws shall give a new bond at least every six years, so that the date of the new bond shall not be more than six years after the date of the bond immediately preceding.

ARTICLE VI.

Capital Stock

SECTION 1. Certificates — The certificates for shares of the capital stock of this Corporation shall be in such form, not inconsistent with its Certificate of Incorporation and the laws of Delaware, as shall be approved by the Board of Directors. Every stockholder of this Corporation shall be entitled to a certificate or certificates, signed by the President or a Vice-President and either the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary, and sealed with the corporate seal, certifying the number of shares owned by him in the Corporation, and no stock certificate not so signed and sealed shall be valid. All certificates of stock shall be consecutively numbered and the names and addresses of all persons owning shares of stock of this Corporation, with the number of shares owned by each and the date or dates of issue or transfer of the shares of stock, shall be entered in books kept for that purpose by the proper officer or agent of the Corporation.

The Corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact and the owner thereof for all purposes including the right to vote and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it has actual notice thereof, save as may be expressly otherwise provided by the laws of Delaware.

SECTION 2. Transfers — Shares of stock of the Corporation shall be transferred only on the books of the Corporation by the holder thereof in person or by his duly authorized attorney and upon the surrender and cancellation of the certificate or certificates for a like number of shares.

SECTION 3. Transfer Agent and Registrar — The Board of Directors may appoint a transfer agent and may also appoint a registrar of transfers, and may require all stock certificates to bear the signature of the transfer agent with or without the signature of a registrar.

ARTICLE VII.

Dividends

SECTION 1. Board to Declare Dividends — Subject to the provisions of the Certificate of Incorporation of the Corporation and any amendment thereof and to the laws of Delaware, the Board of Directors in its discretion may from time to time declare dividends upon the issued and outstanding capital stock of the Corporation from net assets or net profits as defined by the laws of Delaware and may fix and change the dates for the declaration and payment of dividends; provided, however, that no dividend shall be declared or paid which would result in an impairment of the capital of the Corporation as defined by the laws of Delaware.

ARTICLE VIII.

Contracts, Deposits, Signatures on Checks, Etc.

SECTION 1. Execution of Contracts — Except as herein otherwise provided in respect of bonds, notes, checks, etc., all contracts of the Corporation shall be signed by the President or a Vice-President and the Secretary or an Assistant Secretary, but the Board of Directors may

by resolution expressly authorize any other officer or officers, agent or agents in the name and on behalf of the Corporation to enter into any contract or execute and deliver any instrument and such authority may be general or confined to specific instances.

SECTION 2. Deposits — All funds of the Corporation shall be deposited to the credit of the Corporation in such depositaries as the Board of Directors may designate; provided, however, that the Board may authorize funds for use as working funds or for other special or limited purposes of the Corporation to be held in such custody and expended as it shall authorize or direct.

SECTION 3. Signatures on Checks, Drafts, etc. — To be valid as against the Corporation, all checks, drafts and other orders for the payment of money for authorized disbursements or for the transfer of funds of the Corporation shall be signed in such manner and by such person or persons as may be determined by or upon the authority of the Board of Directors. In no event shall any check, draft or order for the payment of money be signed or countersigned in blank.

SECTION 4. Signature on Bonds, Notes, etc. — To be valid as against the Corporation, all bonds, promissory notes, bills of exchange and other evidences of indebtedness, not including checks, drafts and other orders for the payment of money which are provided for in the preceding section shall be signed in its name by the Treasurer or Assistant Treasurer and the President or a Vice-President.

SECTION 5. Satisfaction of Mortgages and Release of Mortgaged Property — The Treasurer, Secretary, Assistant Secretary, or such other officers or agents as may be designated from time to time by the Board of Directors

or Executive Officers authorized by the Board of Directors may enter of record satisfaction of any mortgage to this Corporation which has been paid, may enter credits of record as to any mortgage which has not been fully paid and may release any part of the mortgaged property from the mortgage.

ARTICLE IX.

Miscellaneous

SECTION 1. Corporate Seal — The Board of Directors shall provide a suitable seal containing the name of the Corporation, which shall be in charge of the Secretary. If and when so ordered by the Board of Directors or an authorized committee a duplicate of the seal may be kept and used by the Treasurer or by any Assistant Secretary or Assistant Treasurer. A facsimile of such seal may be used or it may be reproduced in any other manner.

SECTION 2. Fiscal Year — The fiscal year of the Corporation shall commence on the 1st day of January and end on the 31st day of December, each year, or otherwise as the Board of Directors may determine.

ARTICLE X.

Amendments

SECTION 1. By the Board of Directors — These By-Laws may be altered, amended or repealed, and, if repealed, new By-Laws may be adopted by the Board of Directors at any meeting at which a quorum is present, provided that notice of intention to so alter, amend or repeal and adopt new By-Laws shall have been given.

UNITED STATES STEEL HOMES
DIVISION OF
UNITED STATES STEEL CORPORATION

STANDARD CONDITIONS OF SALE

1. DEFINITIONS: As used herein, the words "Company Products" mean parts for such Homes as Company may from time to time make available to Dealers; the word "Dealer" means an Authorized Dealer for Company Products; and the word "Company" means United States Steel Homes Division, United States Steel Corporation.

2. METHOD OF PAYMENT: (Payments shall be made at par in legal tender of the United States of America. Dealer shall make such arrangements for payment as Company shall from time to time require, and Company may suspend production, shipment, or delivery until such arrangements are made.)

A. Truck Shipment

(1) $100.00 Deposit — with Dealer Purchase Order.

(2) Balance Due — to be paid by Dealer with Certified or Cashier's Check; must be received by Company Treasury Department at least three (3) days prior to Loading Date, or Company will remove from Shipping Schedule.

(3) Shipping Charges — Payable by Dealer upon arrival of shipment.

B. Railroad Freight Collect (to Stations having Agent)

(1) $100.00 Deposit — with Dealer Purchase Order.

(2) Balance Due — to be paid by Dealer, upon arrival of shipment, against bill of lading and sight draft.

(3) Shipping Charges — to be paid by Dealer upon arrival of shipment.

C. Railroad Freight Added (to Stations having no Agent)

(1) $100.00 Deposit — with Dealer Purchase Order.

(2) Balance Due — to be paid with Certified or Cashier's Check; must be received by Company Treasury Department at least three (3) days prior to loading Date, or Company will remove from Shipping Schedule.

(3) Shipping Charges — Company prepays freight and invoices Dealer following shipment.

D. Interim Financing Plan

E. Letter of Credit (in form acceptable to Company Treasurer).

3. NUMBERING DEALER PURCHASE ORDERS: The Dealer Purchase Order Number in the upper right corner of Page One of the Dealer Purchase Order should be filled in by Dealer. Any additional items not covered on this Dealer Purchase Order which the Dealer may subsequently require for the completion of this Home, shall be ordered on the Miscellaneous Purchase Order which shall make reference to the Registration Information assigned to the Home.

4. POSITION ON SHIPPING SCHEDULE: Company will establish the Actual Shipping Date as nearly as possible to meet the Arrival Date requested by Dealer. Dealer's position on the Company's Shipping Schedule will be governed by the date the Order is received at the Plant (subject to paragraphs 2 and 5).

5. ORDERS: Company agrees to give careful consideration to each Order. Acceptance of an Order by Company shall take place when an Authorized Company Representative's Signature appears on Page 2 of the Order. However,

Company shall in no way be liable for failure to accept the Order; or, if Order is accepted, Company shall not be liable for failure to ship Company Products as and when desired and ordered by Dealer, or for delay in shipments, however caused, or for shipping over other than routes specified by Dealer, or for shipment into the territory of Dealer on Order of any other Dealer.

6. NON-CANCELLATION: An Order, when accepted in writing by Company, shall not be cancelled by Dealer except as expressly provided elsewhere herein. In the event that within three (3) days before Actual Shipping Date Company loads any or all Company Products covered by the Order in reliance on Dealer's promise to pay any balance due before Actual Shipping Date, or in reliance on such Actual Shipping Date, and Dealer fails to pay such balance due or instructs Company to change Shipping Date, Company has the right to reimburse itself out of any deposit or payment made by Dealer to Company for costs of unloading or damages, and Dealer also agrees to reimburse Company for any such costs in excess of such deposit or payment. Any deposit or payment made to Company with the Order shall be considered as paid to Company as liquidated damages in the event Dealer does not accept delivery of the Company Products ordered within sixty (60) days of the date of acceptance thereof, or within any extension of such time made in writing by Company.

7. CANCELLATION: Dealer may cancel the Order and obtain refund of any deposit or payment made to Company thereon in the event of death or bankruptcy of a bona fide purchaser who has executed a Dealer's Sales Order for the Company Products covered hereby which has been accepted by Dealer, or in the event such purchaser is declared mentally incompet[illegible] provided such

death, bankruptcy or declaration of incompetency is subsequent to acceptance of the Order by Company and prior to shipment of the Company Products so ordered.

8. MODE OF SHIPMENT: Company has the right to ship all Company Products covered by the Order by whatever mode of transportation and from whatever point it may select.

9. SHIPPING CHARGES: Dealer will pay all shipping charges on Company Products shipped to Dealer.

10. DEMURRAGE: Dealer shall be responsible for and shall pay any and all charges for demurrage or storage, and all charges accruing after arrival of shipment at destination.

11. DIVERSIONS: If diversion is made upon Dealer's request or as a result of Dealer's failure or refusal, for any reason, to accept Company Products which may be shipped to Dealer hereunder, Dealer will be responsible for and will pay the additional charges and expenses, including shipping charges, incident to such diversion. If any such diversion results in return of shipment to Company, it shall operate as a cancellation of this Order in so far as it relates to the Company Products covered by the shipment. Any deposit or payment made by Dealer to Company may be applied by Company in reimbursement of its costs arising from any diversion, and Dealer agrees to pay any excess.

12. LOSS OR DAMAGE TO SHIPMENTS: All claims for loss of or damage to shipments of Company Products shipped hereunder, while in the possession of the transportation agency, shall be made by Dealer.

13. PRICE: Dealer shall pay Company, upon each and every shipment of Company Products, Dealer's price from Company according to the terms and provisions of the

Company's price list in effect at the time of the shipment of the Order by Company. All prices of Company Products to Dealer shall be F.O.B. Company's plant from which shipment is made.

14. CHANGE IN PRICE: Company has the right, at any time, without notice, to issue new price lists and to change the prices and terms and conditions therein contained with respect to Company Products.

15. DEALER'S ELECTION: If Company issues a new price list, the prices, terms and provisions therein shall apply to all Company Products ordered by Dealer if at the time of such issue the Order has not been shipped by Company. Company will mail written notice to Dealer of any change affecting prices before shipping Orders for any Company Product to which such change is applicable. Dealer may cancel Orders for Company Products to which such change applies and obtain refund of any deposit or payment made to Company thereon, provided written notice of election to cancel is delivered to Company within seven (7) days after mailing to Dealer of Company's notice. Failure so to cancel shall constitute an acceptance of the revised prices and authority to Company to ship and deliver Company Products covered by such Orders at such revised prices.

16. PAYMENT OF DISPUTED ITEMS: If any item is in dispute, payment therefor shall be made in full by Dealer under protest and a refund will be made by Company if a determination is made in favor of the Dealer. Receipt from Dealer or Dealer's bank of any check, draft or other commercial paper shall not constitute payment until Company has received cash in the full amount thereof. Dealer agrees not to attach, impound, enjoin or otherwise restrict any payments made by him or any other

person acting in his behalf or on his order. Payment by Dealer in advance of shipments is subject to adjustment.

17. WARRANTY INFORMATION: There is set forth below the undertaking extended by the Company to the Dealer, which the Dealer in turn may elect, on his own behalf and not on behalf of the Company, to extend to the Owner of the U.S. Steel Home the parts for which are covered by his Order.

Warranty

Company warrants to Dealer that the panels and structural parts of U.S. Steel Homes manufactured or supplied by Company are free from defects in material and workmanship under normal use, service and maintenance.

Company agrees to make good at Company's Plant, or at Company's option to repair in place, parts determined by Company to be defective in material or workmanship under normal use, service and maintenance. This warranty shall not apply if, in Company's judgment, a panel or structural part has been repaired, refinished or altered so as to affect its stability or appearance; or if it has been subjected to misuse, negligence, accident or inadequate maintenance; or if, in Company's judgment, conditions were maintained in the Home which resulted in excessive condensation.

This warranty does not apply to furnaces, water heater, or other items of special equipment purchased by the Company; it is customary for the manufacturers thereof to warrant their own products.

Any part returned to Company for examination under this warranty must be shipped prepaid to Company in accordance with Company's written instructions. Replacements shall be f.o.b. shipping point, and Company shall not be liable for shipping or installation costs.

This warranty expires one (1) year from the date shown on the Registration Plate affixed to the Home. Where there is any difference between said date and the date shown on Company's records, the latter shall govern.

Company reserves the right to revise, alter or revoke this warranty at any time with respect to panels or structural parts manufactured or supplied by Company, after giving notice to Dealer.

This warranty is in lieu of all other expressed or implied warranties and all other liability by Company, and Company neither assumes, nor authorizes any person to assume for it, any other liability arising from the sale of Company's products. Company shall not be liable for any consequential damages whatsoever.

18. RETURN GOODS AND ALLOWANCES: No Company Product shall be returned by Dealer to Company without the prior written consent of the Company. Dealer shall pay all packing charges and prepay all shipping charges. On Company Products (other than defective) returned for credit, allowance shall be credited to Dealer's account based upon Company's determination of the condition and value of such Company Products at the time of receipt of same by Company.

19. TITLE: Title to all Company Products, except where the invoice shows sale to be on credit, shall be and remain with Company until actual receipt of the full purchase price in cash by Company and delivery of the shipment to Dealer. Until Company has received cash in full payment of any check, draft or other commercial paper, its right to retake and resell Company Products for which such paper is issued shall continue.

20. TAXES: Dealer will pay any taxes imposed by any law of the United States, or municipality, or other taxing

authority upon the use or sale of Company Products shipped hereunder, or upon the ownership thereof after title has passed to Dealer.

21. OTHER CONDITIONS OF SALE: All sales are subject to such additional conditions as Company may from time to time adopt and transmit to Dealers, and all such additional conditions shall be deemed to be incorporated herein.

22. CHANGE OF PRODUCTS: Company reserves the right to make changes or omissions in unshipped Homes without notice and without obligation to make such changes or omissions on Homes already shipped, and thus does not guarantee that each Home shipped will, in each and every particular, conform to catalogs, advertising, literature, plans, drawings and descriptions of materials that may be in circulation at any time. Specific details, dimensions, or other information set forth in catalogs, advertising, literature, plans, drawings and descriptions of materials supplied by the Company have been obtained as the result of research or from sources believed to be reliable, but Company assumes no responsibility in Dealer's use thereof.

UNITED STATES STEEL HOMES
DIVISION
UNITED STATES STEEL CORPORATION

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ERECTION AND SERVICE BULLETIN

Subject IMPROVEMENTS IN DESIGN

Effective with shipments loaded on and after February 21, 1962, the following improvements in design are being incorporated into United States Steel Homes packages.

A wood window stool-apron will be supplied for all wood Malta windows.

Masonite battens will replace all 1 x 4 wood battens.

Wood Window Stool-Apron

To improve the utility of interior window trim, a wood stool-apron will be included for use with both the steel snap-on window trim and optional wood window trim in all Home Packages.

The wood stool-apron will be sized for each window width. The stool-apron shipped with steel snap-on trim will be primed white, the stool-apron shipped with wood window trim will be unfinished.

To assure a tight fit of the stool-apron to the side jambs, the header and side jambs should be installed first to insure the proper positioning of the stool-apron. Attached are sketches showing this installation.

Masonite "X" Siding Battens

Masonite "X" siding battens, size 7/16" x 3 5/8" x 97" in length, will replace the 1" x 4" wood battens. Masonite battens are back-sealed and are primed on the edges and face side, and will require the normal field paint application. Masonite battens are to be applied with 1 1/2" galvanized twist nails, supplied in the erection parts box, and flush nailed 12" o.c. on both edges of the batten.

The majority of our dealers have requested that the previous practice of presized battens to the correct length be eliminated since, if there is any mislocation of water table or Fascia trim, it is not possible to obtain a tight fit. Therefore, the new Masonite trim will not be cut to length, the correct length being cut by the dealer at the time of application.

The information contained in this Bulletin has been obtained as the result of research or from sources believed

to be reliable but United States Steel Homes Division assumes no responsibility in the use thereof.

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Date 2-15-62

Care must be exercised in the cutting and utilization of cut-off pieces of battens, otherwise, a shortage of materials may develop. Your Erection Personnel must be instructed to apply all long battens first, and utilize the off-fall from those cuts for application where short lengths of battens are required.

PLEASE ADVISE YOUR ERECTION PERSONNEL OF THE ABOVE CHANGES EFFECTIVE IN SHIPMENTS LOADED ON OR AFTER FEBRUARY 21, 1962.

UNITED STATES STEEL HOMES
DIVISION
UNITED STATES STEEL CORPORATION

E. B. No. 245
Page 1
Date 4-23-62

ERECTION AND SERVICE BULLETIN

Subject Interior Partition Panels — Vertical Steel Framing Members

All dealers have been aware of the pending introduction of interior panels utilizing steel vertical framing members. Over the past year, interior partitions with steel frames have been given extensive field testing in normal building operations by many of our dealers throughout our territory of operations.

Effective approximately May 1, 1962, all homes shipped will contain the new steel framed interior partition panels.

For your information, we are enclosing the supplement to Engineering Bulletin No. SE-277, dated January 19, 1962, which covers the new interior partition system.

For your review, we are enclosing a drawing showing details of the steel partition panel installation which you should go over with your Erection Personnel prior to the receipt of your first home with the partition system.

Special note should be made of the usage of wood alignment splines and plywood and gypsum fillers as they are to be used in the various panel conditions as shown on the attached installation drawing. (All panels have wood top and bottom plates). Metal corner beads and drywall application will continue to be made under the normal approved methods of application.

HANDLING CARE

Steel framed interior panels will have exposed gypsum at the panel edges. Unloading and Erection Personnel must exercise caution during unloading, storing and erection so as not to damage gypsum edges.

When storing panels prior to their use in erection — if the stacking method is used — they should be stacked with larger width panels on the bottom, graduating to smaller width, in a pyramid method and with header over header so as not to break the gypsum. If panels are stored on edge, care should be exercised so as not to damage gypsum edge when moving panels in and out of their storing racks.

In the event gypsum does become damaged during handling, repairs may be made as follows: Cut out the damaged portion of the gypsum to the nearest adjacent studs. Cut replacement gypsum to fit damaged "cut-out", drill pilot holes and attach with wafer head screws provided in the erection box. See attached sketch for screw location.

Affidavit of Kenneth L. Anderson—July 15, 1966

The information contained in this Bulletin has been obtained as the result of research or from sources believed to be reliable but United States Steel Homes Division assumes no responsibility in the use thereof.

UNITED STATES STEEL HOMES
DIVISION
UNITED STATES STEEL CORPORATION

E. B. No. 246
Page 1
Date 5-9-62

ERECTION AND SERVICE BULLETIN

Subject MODERNFOLD DOORS—
IMPROVED DESIGN

Modernfold doors supplied with United States Steel Homes Division's Home Packages will be of an improved design effective with home shipments approximately May 15, 1962. The design improvements have been made to eliminate fabric wrinkling that has been experienced with past shipments. The design improvements are as follows:

(1) The steel back post has been increased to 3/4" x 3/4" thereby improving the glue contact surface by 70%.

In addition to the 70% increased glue surface an improved adhesive applied more generously will eliminate any future pulling away of the fabric from the back post.

(2) The increased size of the back post will give greater strength and rigidity to the back post area of the door, top to bottom, thereby eliminating any unacceptable wrinkles that developed in the previous design.

(3) The lead post yoke has been redesigned to improve its strength five to six times of the previous

lead post by the use of a cold rolled steel wire formed yoke .1875 in diameter.

(4) The lead post bumper gasket has been enlarged so it can be cut to fit over the baseboard.

The above outlined improved design, combined with the correct installation in the field, will eliminate field problems that you have experienced in the past. The attached Installation Requirements should be given to your installation personnel for their thorough review.

The information contained in this Bulletin has been obtained as the result of research or from sources believed to be reliable but United States Steel Homes Division assumes no responsibility in the use thereof.

INSTALLATION REQUIREMENTS

1. Openings

a. Should be plumb and level.

b. Track can be fastened to gypsum ceiling with three Molly bolts, providing it is level. If ceiling spacer falls over closet opening, tracks may be installed with screws provided in door package. Undue sag or waviness in ceiling or jambs will cause unacceptable fabric appearance.

2. Door Installation Instructions

a. Track must be installed on level surface. If it is bowed, the fabric will rub ceiling causing hard operation and unacceptable fabric appearance may occur.

b. Jamb clips can be attached with sheet metal screws or Molly bolts. If jamb has waviness or bowed surface, the clips should be shimmed to a straight line from top to bottom. Caution should be taken to eliminate countersinking clips into the gypsum board.

c. Track can be shimmed level if header is bowed.

d. When post of door is attached to a bowed jamb, the post will take the same contour and may cause unacceptable fabric appearance.

UNITED STATES STEEL HOMES
DIVISION
UNITED STATES STEEL CORPORATION

E. B. No. 247
Page 1
Date 5-9-62

ERECTION AND SERVICE BULLETIN
Subject FULL-VU LEIGH STEEL FOLDING DOORS — DESIGN IMPROVEMENTS.

United States Steel Homes Division is pleased to announce that Air-Control Products Company have introduced design improvements in the Leigh Full-Vu steel folding door supplied through our company. The design improvements have been made to give you and your customers a superior operating door and will eliminate track jumping that has been occasioned in the past.

The new improved door is now being shipped when ordered as an option with your Home Packages. The design improvements are as follows:

1. Knobs located on inner panel — for greater ease of operation.

2. Louver and panel designs on the large panels (3′ and 5′) have been reduced in width. The appearance is superior — and the panel is stronger because less base metal is cut.

3. Heavier gauge braces are now used. To further increase strength of panel, brace stock has been increased from 24 gauge to 20 gauge.

4. Nylon bearings are used on top and bottom floating guides as well as on pivot pins. These special bearings insure freedom of pin movement and substantially reduce noise.

5. Heavier springs are used with guide rods. The heavier spring, combined with the nylon bearing insure guide and track contact.

6. Nylon guide caps have been redesigned. Radii changed to reduce possibility of cap moving out of track.

7. Heavy machine lock nut with split lock washer now used on bottom pivot pin. This combination replaces stamped lock nut and eliminates possibility of pivot movement after proper initial setting.

8. Packing carton has been redesigned to further reduce the possibility of shipping damage.

To eliminate maintenance call back, doors must be installed properly and in accordance with the manufacturer's installation instructions. Attached to this Bulletin is a copy of the Leigh Full-Vu Closet Door Installation Instructions for your review with your installation personnel. These instructions are also packed in each door package.

The information contained in this Bulletin has been obtained as the result of research or from sources believed to be reliable but United States Steel Homes Division assumes no responsibility in the use thereof.

UNITED STATES STEEL HOMES
DIVISION
UNITED STATES STEEL CORPORATION

E. B. No. 248
Page 1
Date 5-15-62

ERECTION AND SERVICE BULLETIN

Subject GABLE BATTENS

Many of our dealers have requested that the use of battens be re-instated to cover plywood joints of Gable Panels. Effective immediately, all Home Shipments will contain #BF-56C Moulded Battens, in 8' lengths, for field cutting and field application to Gable Panels.

The information contained in this Bulletin has been obtained as the result of research or from sources believed to be reliable but United States Steel Homes Division assumes no responsibility in the use thereof.

UNITED STATES STEEL HOMES
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E. B. No. 249
Page 1
Date 5-15-62

ERECTION AND SERVICE BULLETIN

Subject INSTALLATION — PARTITION END FILLERS

This Bulletin is issued to clarify the method of installation of partition end fillers and drywall metal corner beads for steel framed interior partition panels. (Please refer to Erection & Service Bulletin #245 dated April 23, 1962.)

In those instances where the plywood and gypsum fillers and metal corner beads are installed by the same sub-contractor, the following method may be used.

Position the plywood and gypsum in the panel edge recess and secure with the same drywall nails attaching the metal corner beads. (Fillers may temporarily be held in place by a drywall nail top and bottom). Attach the metal corner bead by drywall nailing from face side of the panel into the plywood filler edge and drywall nailing from the panel end through the gypsum and plywood fillers and through the metal panel stud.

In those instances where panel end fillers and metal corner beads are installed by two different sub-contractors, the following method may be used.

Attach the gypsum fillers and plywood fillers by drywall nails in accordance with the attached drawing. Drywall contractor secures metal corner beads as described above.

You will note from the attached drawing the use of one wider partition floor anchor, centered on the panel joint rather than two anchors at each panel joint. The new wider partition anchor will be shipped commencing approximately June 1, 1962.

The information contained in this Bulletin has been obtained as the result of research or from sources believed to be reliable but United States Steel Homes Division assumes no responsibility in the use thereof.

UNITED STATES STEEL HOMES
DIVISION
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E. B. No. 250
Page 1
Date 5-21-62

ERECTION AND SERVICE BULLETIN

Subject GABLE BATTEN SPACING

The attached drawing supplements Erection & Service Bulletin #248, dated May 15, 1962, and shows the recommended spacing on the Gable Panels of #BF-56C Mould Battens.

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UNITED STATES STEEL HOMES
DIVISION
UNITED STATES STEEL CORPORATION

E. B. No. 251
Page 1
Date 6-8-62

ERECTION AND SERVICE BULLETIN

Subject HOMOSOTE SOFFIT JOINTS—
"H" MOULD

Effective approximately June 15, 1962, all homes using Homosote Eave Soffit Board will have the following change in Soffit application. All homes with Homosote Soffits will have "H" moulding included to receive the Soffit Board at the butt joints. "H" moulding is to be cut

to size in the field and installed as shown in the below sketch.

The use of "H" moulding will eliminate bad joint appearance caused by contraction after Soffit installation.

The information contained in this Bulletin has been obtained as the result of researc' or from sources believed to be reliable but United States Steel Homes Division assumes no responsibility in the use thereof.

UNITED STATES STEEL HOMES
DIVISION
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E. B. No. 253
Page 1
Date 6-22-62

ERECTION AND SERVICE BULLETIN

Subject WATERTABLE FLASHING—BOARD AND BATTEN EXTERIOR HOMES

To further improve the product and in order to more positively flash behind watertable on plyaloy board and batten architectural treatment homes, effective in the immediate future a 26 gauge paint bond galvanized flashing will be supplied for field installation in accordance with the attached drawing.

The bottom edges of the plyaloy face sheets will be shipped unnailed to permit insertion of the flashing into the rout on the back side of the face sheet. The flashing must be lapped 4" at joints to avoid soldering. Although the flashing may be tacked in place temporarily, or until such time as the watertable is installed, it is important that the face sheet be nailed 8" o.c. with 1-1/2" galvanized ring nails supplied.

Flashing will be supplied in 12′ lengths; however, initially some flashing may be furnished in 10′ lengths.

All Erection Personnel should be advised of this change and the attached drawing reviewed with them.

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UNITED STATES STEEL HOMES
DIVISION
UNITED STATES STEEL CORPORATION

E. B. No. 255
Page 1
Date 6-22-62

ERECTION AND SERVICE BULLETIN

Subject ERECTION HINT — INTERIOR PARTITION INSTALLATION

Gypsum face sheets on 48″ and 24″ interior partitions have tapered edges for drywall application. All other interior partitions generally have one edge tapered and the opposite edge the full 1/2″ thickness.

Many dealers for some time have turned partitions around so that the tapered edge will meet the tapered edge of the adjoining panel, or so that the full 1/2″ thickness edge will fall at the end of a run of partitions or abut another wall running at right angles. In many cases a cut edge partition may be shifted from one location in a row of panels to one end of the other where the full 1/2″ thickness will present no drywall finishing problems.

Turning partitions around or shifting partition location in this manner greatly improves drywall finishing and overall appearance.

Affidavit of Kenneth L. Anderson—July 15, 1966

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UNITED STATES STEEL HOMES
DIVISION
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E. B. No. 256
Page 1
Date 6-22-62

ERECTION AND SERVICE BULLETIN

Subject KITCHEN CABINET INSTALLATION

Counter Top Screws

In the immediate future, a package of screws will be included in the erection parts box for counter box installation to the Scheirich kitchen.

The screws will be round head, slotted #12 x 2-1/4",

Molly Anchors for Cabinet Installation

As soon as possible, molly anchors with longer screws will be supplied to improve wood kitchen cabinet installation, especially in homes where one or two cabinets may be installed on a steel framed interior partition or an exterior wall.

The anchor itself, designed for 1/2" sheetrock, will remain the same; however, a longer screw will be incorporated within the anchor to permit fastening through the heavier wood frame on the back of the cabinets rather than through the thin veneer cabinet back only.

To install cabinets in this manner reqpires the following procedure:

1. Pre-drill holes through the cabinet frame (four molly anchors supplied per cabinet) generally, two

each at top and bottom of the cabinet. Holes need not be any larger than screw.

2. Position cabinet to wall and mark pre-drilled hole locations. Install molly anchor through sheetrock, draw up tight, and then back screw out.

3. Position cabinet and re-install screws.

The molly anchor itself is designed for installation through and against the sheetrock only. Never attempt to install anchor through wood and sheetrock and tighten in one operation.

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[LETTERHEAD OF CHASE BARLOW LUMBER CO.]

May 11, 1962

Fortner Enterprises
4125 South Third Street
Louisville, Kentucky

Sub: 36/10 x 24/10

Bobby Burns plan on slab

Gentlemen:

We are pleased to quote you on above mentioned subject as per attached specifications package, contents as follows:

	Basic	5% 10th Prox.
Basic Package	$1,717.95	$1,632.05
Priming (Add)	36.84	35.00

Yours very truly,

CHASE BARLOW LUMBER COMPANY

/s/ Charles T. Barlow

CHASE BARLOW LUMBER COMPANY
MANUFACTURED HOME PACKAGE CONTENTS AND SPECIFICATIONS

Name Fortner Enterprises Date 5/11/62
Job Description Bobby Burns Sheet No. 11151
FHA X Conventional

WALL PACKAGE

1. Ext. wall assembled with the 1/2" sheathing applied, fnd. flashed.
2. Windows installed and flashed Wood D. H. Primed
3. Int. partitions assembled per plan.
4. _____
5. _____
6. _____

ROOF PACKAGE

1. Sanford Roof Trusses w/intregal overhang per plan
2. Roof Deck 3/8" DC Plywood plyclips.
3. Truss purlins and drywall nailers as required
4. Roofing and Felt per plan
5. _____
6. _____

CORNICE PACKAGE

1. All cornice as per plan including gutterboard grooved and beveled, soffit plywood ripped to specified width. Primed
2. Architectural treatment as per plan.
3. Louvers Alnminum: soffit vents 4 each
4. Exterior doors Prehung per plan w/Yale Hardware
5. _____
6. _____

INTERIOR TRIM PACKAGE

1. Interior Doors Prehung Lauan with Yale Hardware
2. Closet Doors Steel Classic Bifolds
3. Door and Wdw. trim 2-1/4" W.P. Tear Drop
4. Base and Shoe 2-3/4" W.P. Sanitary
5. Closet Material 1 each—24" Shelf w/rod and Cleats
6. Hardware Wdw. Locks & Lifts, Aluminum Thresholds
7. Door stops, Door Weatherstrip, Assembly Nails
8. O.S. Blinds, Med—Cab.

ITEMS NOT INCLUDED

1. Sales Tax
2. _____
3. Insulation
4. Kitchen Cabinets
5. _____
6. _____
7. _____
8. Wdw. & door screens
9. Drywall and masonry
10. Finish flooring
11. _____
12. _____

[LETTERHEAD OF EMPIRE HOMES CORPORATION]

July 23, 1962

Mr. A. B. Fortner, Jr.
Zettwoch-Fortner
4123 S. Third Street
Louisville, Kentucky

Dear Sir:

In accordance with our recent conversation, we are pleased to quote you the following prices on the "Ascot" model:

Basic Price (F.O.B. Golden Meadows)	$1,673.90
Options Available (not included in basic price)	
Sidewall Insulation (factory installed)	43.65

False Gable	60.00
Aluminum Storm Door (front door only)	19.85
Deluxe trim for metal doors	10.50
Roof Shingles — 235# including nails	87.95

The above prices do not include Ky. State Sales Tax. The above prices are subject to a 1% cash discount on the 10th day of the month following shipment. The above package will be fabricated in accordance with the following:

1. Exterior Walls: factory built room size panels for 8' ceiling height, consisting of 2"x4" studs 16" O.C., single bottom plate, double 2"x4" top plate all kiln dried Construction and Standard Hemlock. 1/2" insulating sheathing board, Century Aluminum Co., windows series 400 factory installed in accordance with plans, with 1/2" interior jamb liner factory installed in walls panel. Exterior door openings framed, interior side of wall panels left open for plaster or dry-wall application.

2. Exterior doors, Entrance 3'0x6'8"x3/4" solid core door as per plan; colonial panel door of U.P.P. furnished per plan, rear door 2'8"x6'8"x1-3/4" Douglas Fir per plan. Doors prehung in jamb assembly complete with trim, weatherstripping and aluminum thresholds with plastic all weather sealer, factory installed 3 hinges and locks.

3. Gable panels, factory built in one piece, 2"x4" — 16 O.C. with 1/2" insulating sheathing aluminum gable louver furnished for field installation.

4. Roof Construction, factory built clear span roof trusses built in accordance with attached specifications. 3/8" C.D. plywood roof sheathing with ply-clips furnished.

5. Exterior trim, clear poplar and fir for rake cornice, gutterboard and exterior quarter round. 3/8" A.C. exterior

plywood, factory cut furnished for soffit. Wood columns, shutters, flower boxes furnished per plans.

6. Interior partitions, factory built partitions framed of 2"x4" studs 16" O.C. of kiln dried Construction and Standard Hemlock, thickness of partitions per plan.

7. Interior doors, hinged door 1-3/8" flush hardwood veneer S.S.S. finished doors prehung in jamb assembly complete with trim and locks.

8. Bifold doors; American Steel Door — Classic design furnished for field installation complete with hardware and 3/4x3/4 trim, or trim of special design at option of builder. (see details enclosed).

9. Interior trim; clear poplar of special design 1/2x5/8 interior casing for hinged doors, windows and baseboard furnished in random lengths for field mitre and installation. Separate shoe mould is not furnished.

10. Additional materials furnished, wood closet shelves, wood pole, and shelf supports; all nails, screws and steel connectors required to assemble Empire Components; #15 roofing felt, and complete erection plans and instructions.

Finishing:

1. All exterior trim including soffit material to have one coat white pigmented toxic sealer.

2. All hinged doors to have manufacturers S.S.S. finish.

3. All interior trim to have one coat white pigmented toxic sealer.

We certainly appreciate the opportunity of working with you on this subdivision, we would like you to know

our facilities and know how are at your disposal in assuring you complete success.

Respectfully yours,

EMPIRE HOMES CORPORATION
E. P. Graas
Vice President

EPG.d

[LETTERHEAD OF UNITED STATES STEEL CORPORATION]

April 23, 1964

I hereby certify that the attached documents contain true and correct copies of minutes included in the minutes of the Finance Committee and Board of Directors of United States Steel Corporation.

B. L. Rawlins, Secretary

FINANCE COMMITTEE MEETING,
JANUARY 12, 1954

"A program setting forth the desirability of providing

FINANCING IN CONNECTION WITH THE ERECTION AND SALE BY DEALER-BUILDER OF HOMES PRODUCED BY UNITED STATES STEEL HOMES, INC.

was presented.

After discussion, on motion and by the affirmative vote of all present, the organization of a subsidiary of the Corporation with an authorized capital of $5,000,000 and initial paid in capital of not to exceed $2,000,000, for the purpose of providing construction and mortgage financing to dealer-builders representing United States Steel Homes, Inc., was authorized, with the understanding that such

corporation would be operated on a sound competitive financial basis entirely independent of United States Steel Homes, Inc., and it would intend to procure firm commitments from mortgage investors to purchase approved mortgages on homes to be erected by such dealer-builders, it being intended that such corporation would not hold mortgages as an investment.

Thereupon, on motion and by the affirmative vote of all present, the following resolutions were adopted:

RESOLVED: That this Corporation has no objection to the use of the name U. S. Steel Homes Credit Corporation or any similar name upon the organization of such other corporation in the State of Delaware or its qualification in any other State, such name not being so similar to the name of this Corporation to be calculated to deceive.

FURTHER RESOLVED: That the officers of this Corporation be, and they hereby are, authorized and directed to make and execute, under the corporate seal of this Corporation, such certificates or consents as may be required and to file the same in the proper State offices."

FAIRLESS HILLS PENNSYLVANIA HOUSING PROJECT

It appears highly desirable that a proposal contemplating completion and sale to outsiders of 279 houses under existing programs and construction and sale of 2,000 additional houses on FHA approved plot basis be adopted. It is proposed to implement the program in such a manner as to save time by dovetailing each part of the program into the next part thus avoiding stops and starts, thereby minimizing overhead and other costs, take full advantage of the early spring home buying and at the same time not to become extended beyond the approved sections of the

program. It is expected to accomplish this objective in the following manner:

1. Based upon VA guaranteed and/or conventional mortgage financing by usual mortgage investors, institute immediately a sales program to sell 165 houses to outsiders. Concurrently, develop complete program to order, erect and sell the remaining 114 houses of the 1953-1,000 house program.

2. When sales program to dispose of 165 houses appears to be successful, release order to United States Steel Homes, Inc. for 114 houses and promptly proceed to erect and sell them as in 1 above.

3. Concurrently with progress of 1 and 2 above, develop specific plans for site clearance, grading, installation of sewer and water lines, streets, curbs, sidewalks and erection of model houses, etc. for first 500 house plot and seeure prior approval thereof by FHA so that this program can be quickly placed into operation as and when the sale of 114 houses appears to be successful.

4. After erection of model houses, buyers' orders will be taken and accumulated into the most efficient number for erection at one time. Total number of houses in process of erection will not exceed 100 at any one time.

5. Site clearance and erection and sale of the remaining 1500 houses will be patterned after 3 and 4 above after securing prior FHA approval.

6. If the formation of the finance corporation is approved, the financing of the 165 and 114 homes as well as for the prospective 2,000 additional homes to be constructed as above can be financed through the finance corporation.

7. Depending upon satisfactory sale of the 165 and 144 homes and the satisfactory program on the sale of the first 500 houses of the 2000 house program, proceed with construction of Building "C", Bowling Alley and Filling Station of the Shopping Center. Meanwhile, complete all plans for the Shopping Center additions at an early date so as to be prepared to proceed promptly as the opportunities are presented.

PROGRAM FOR FINANCING CONSTRUCTION AND SALES BY DEALER-BUILDER OF U. S. STEEL HOMES, INC.

United States Steel Homes, Inc. states that ample consumer demand exists for new, modern houses in the low and moderate price brackets, provided sales are on terms within the financial means of the low- and middle-income groups. It asserts that the price concern of builders, including its own dealer-builders, lies in the development of outlets for FHA-insured and VA-guaranteed home mortgages bearing the most liberal loan-security ratios and terms allowable by law, and the procurement of construction financing against "take-out" commitments for the purchase of such mortgages.

United States Steel Homes, Inc. also states that to the extent that a prefabricated housing producer may assist its dealer-builders in developing such outlets and procuring such financing, its own potential for expansion is enhanced and that failure to provide financing restricts the market since dealer-builders will usually seek out that prefabricated house manufacturer who is prepared to provide a satisfactory form of financing. The trend in the prefabricated industry has been for the manufacturer, directly or through an affiliate, to provide construction money to the

dealer-builders against investor mortgage commitments and to originate mortgages for resale to the investors.

We have been informed that the financing corporation operated by the principal prefabricated competitor, by assessing allowable fees and charges, has in addition to realizing substantial profits, also stimulated sales of the prefabricated homes.

RECOMMENDATION:

To meet the competitive demands, it is proposed to form a wholly owned subsidiary, to be known as United States Steel Homes Finance Corporation, for the purpose of providing, through its facilities, construction and mortgage financing for the dealer-builders representing United States Steel Homes, Inc.

1. The above purpose can be accomplished by:

(a) Making an initial capital investment of $1 to $2 million to be paid in as required. (Authorized capital of $5 million).

(b) Procuring firm commitments from mortgage investors to purchase approved FHA and VA mortgages on homes to be erected by dealer-builders of United States Steel Homes, Inc. Thus, the finance corporation operates essentially as a mortgage broker.

(c) Lending capital funds and borrowed money (estimated loanable fund $12 to $16 million on $2 million capital) to dealer-builders of United States Steel Homes at the allowable fees and interest charges as construction money can be used in the construction and sale of United States Steel Homes.

(d) Borrowing funds through the sale of commercial paper or short term revolving bank loans. (Anticipate the normal borrowing relationships would be 6 to 8 times paid-in capital.)

2. The advantages of forming a subsidiary finance corporation are:

(a) Make United States Steel Homes, Inc. dealers competitive.

(b) United States Steel Homes, Inc. states that sale of homes to their dealer-builders will be substantially stimulated. It is understood, however, that the finance corporation will be used to render financial service requested by dealer-builders and will not be used on a means to force sales to dealer-builders.

(c) To provide a source of construction financing and house mortgage procurement for the additional 2000 house program at Fairless Hills, provided that this program is carried.

(d) To provide intangible marketing assistance to United States Steel Homes, Inc. through information relating to regional housing conditions, product improvement, Government policies, marketing programs, which data would be obtained through business contacts with dealer-builders, mortgage investors, Government housing agencies, home building associations and others.

(e) As a corollary result of providing requested financial service to dealer-builders of United States Steel Homes, Inc., it is anticipated that a satisfactory profit will be earned by Finance Corporation on the capital invested therein.

NOTE:

Under FHA-approved projects, FHA provides thorough inspection service during period of construction. United States Steel Homes, Inc. has been providing inspection service as a check on performance of their dealer-builders. This inspection has been applied to the major portion of erected Gunnison Homes. It is contemplated that these inspectors will be transferred to the finance corporation to

provide protection to both the product and mortgage thereon. This service will be performed on similar basis as followed by insurance companies.

1/12/54

A minute like the attached appears regularly in the minutes of the Finance Committee of United States Steel Corporation, September 1956 through March 17, 1964.

FINANCE COMMITTEE MEETING MARCH 17, 1964

Report on U. S. Steel Homes Credit Corporation

"There was presented a report summarizing the financial transactions and results of U. S. Steel Homes Credit Corporation."

FINANCE COMMITTEE MEETING,
SEPTEMBER 11, 1956

Report on U. S. Steel Homes Credit Corporation

"There was presented a report outlining the program of U. S. Steel Homes Credit Corporation and summarizing its financial transactions and results."

FINANCE COMMITTEE, MARCH 23, 1954

"There were presented

RECOMMENDATIONS FOR PENSION AND INSURANCE BENEFITS FOR CERTAIN EMPLOYEES OF U. S. STEEL HOMES CREDIT CORPORATION

as set forth in schedules submitted.

Thereupon, on motion and by the affirmative vote of all present, the following resolutions were adopted:

RESOLVED: That the group of employees of U. S. Steel Homes Credit Corporation named in the schedule

submitted to this meeting be, and hereby it is, determined and designated as covered by the Plan for Employee Pension Benefits (Revision of 1950) and the specific benefits provided thereunder as specified in said schedule, and further

RESOLVED: That the groups of employees of U. S. Steel Homes Credit Corporation named in the schedule submitted to this meeting be, and hereby they are, determined and designated as covered by the Plan for Employee Insurance Benefits (Revision of 1950) and the specific benefits provided thereunder as specified in said schedule."

FINANCE COMMITTEE MEETING,
JANUARY 25, 1955

"There was outlined a proposal for a

LOAN OF UP TO $2,000,000 BY U. S. STEEL HOMES CREDIT CORPORATION TO AMERICAN COMMUNITY BUILDERS, INC.,

or one of its subsidiaries, secured by first lien on certain property in Park Forest, Illinois, and by a guarantee of American Community Builders, Inc.

After discussion, on motion and by the affirmative vote of all present, this proposal was recommended."

FINANCE COMMITTEE MEETING,
FEBRUARY 15, 1955.

"The Chairman referred to the matter of:

FINANCIAL OPERATIONS OF U. S. STEEL HOMES CREDIT CORPORATION

and stated that the Corporation had heretofore subscribed to 10,000 shares of the capital stock of the Credit Corporation of the par value of $100 each for which it had paid

$1,000,000. The Chairman outlined the requirements of the Credit Corporation for additional funds with which to conduct its operations.

After discussion, on motion and by the affirmative vote of all present, the following resolutions were adopted:

RESOLVED: That the officers of this Corporation be, and they hereby are, authorized on behalf of this Corporation to purchase at par value of $100 per share, upon request by the Credit Corporation, up to 10,000 additional shares of the capital stock of U. S. Steel Homes Credit Corporation.

RESOLVED: That the officers of this Corporation be, and they hereby are, authorized on behalf of this Corporation to make advances to U. S. Steel Homes Credit Corporation in amounts not to exceed a total of $2,000,000, such advances to be covered by promissory notes of like tenor to the promissory notes of other subsidiaries and this Corporation agrees that the indebtedness covered by said notes shall be subordinate to loans to said U. S. Steel Homes Credit Corporation made by any bank prior to the revocation of this resolution."

FINANCE COMMITTEE MEETING,
FEBRUARY 23, 1955

"Reference was made to the proposal, recommended January 25, 1955, for a

LOAN OF UP TO $2,000,000 BY U. S. STEEL HOMES CREDIT CORPORATION TO AMERICAN COMMUNITY BUILDERS, INC.

or one of its subsidiaries, secured by first lien on certain property in Park Forest, Illinois, and by a guarantee of American Community Builders, Inc. The Committee was advised that it has been proposed that the term of the loan be for a period of not to exceed 36 months.

On motion and by the affirmative vote of all present, the extending of this loan for a period of not to exceed 36 months was recommended."

FINANCE COMMITTEE MEETING,
JANUARY 24, 1956

"There was a discussion of the:

FINANCIAL OPERATIONS OF U. S. STEEL HOMES CREDIT CORPORATION,

including proposal of the Credit Corporation to acquire FHA and VA mortgages from dealers of United States Steel Homes, Inc., with or without the guarantee by United States Steel Homes, Inc. against loss on the part of the mortgages so acquired, up to a maximum of $33,000,000 and to hold such mortgages on a temporary basis pending opportunity to dispose of the same at the best available price.

After discussion, on motion and by the affirmative vote of all present, the foregoing proposal of the Credit Corporation was recommended."

FINANCE COMMITTEE MEETING,
FEBRUARY 26, 1957

U. S. Steel Homes Credit Corporation Revolving Fund

"The Chairman reported that the U. S. Steel Homes Credit Corporation proposed to continue in effect in 1957 its $33,000,000 revolving fund for mortgage purposes in connection with homes produced and sold by United States Steel Homes Division.

After discussion, on motion, duly seconded, it was unanimously

RESOLVED: That this Committee recommends the U. S. Steel Homes Credit Corporation continue in effect during 1957 its $33,000,000 revolving fund."

FINANCE COMMITTEE MEETING,
SEPTEMBER 10, 1957

Report on U. S. Steel Homes Credit Corporation

"There was presented a report summarizing the financial transactions and results of U. S. Steel Homes Credit Corporation. In addition, the Credit Corporation's modified mortgage program consistent with the recently issued Government housing regulations was outlined."

FINANCE COMMITTEE MEETING,
DECEMBER 16, 1958

Report on U. S. Steel Homes Credit Corporation

"There was presented a report summarizing the financial transactions and results of U. S. Steel Homes Credit Corporation.

There was also presented a report on the proposed operations in 1959 of United States Steel Homes Division of the Corporation and a proposed program of U. S. Steel Homes Credit Corporation whereby for the purposes of enabling the Homes Division (1) to attain a minimum distribution of 1,800 units in 1959, and such additional distribution as may be feasible, and (2) to enlist and maintain the support of and assistance of selected dealers in the development and testing of steel components, and when specially requested by the Homes Division,

A. The Credit Corporation, in instances in which its present programs of loans, mortgage commitments issuance, and mortgage commitment procurement prove inadequate to effectuate the above purposes, would extend the following financial assistance to dealers in addition to its present programs:

1. Make loans to or for the benefit of dealers or enter into other forms of transactions designed directly to effectuate the above purposes, without conformity

with conventional or conservative patterns but within the bounds of prudent business judgment;

2. Issue commitments for the purchase of FHA-insured and VA-guaranteed mortgages at fixed discount expense, and hold and liquidate mortgages acquired thereunder as promptly as may be practicable with minimum loss, if any, consistent with the limitation of the $33,000,000 revolving fund;

provided,

B. That the Homes Division underwrite and guarantee all loss incurred in the liquidation of mortgages acquired under any commitments providing fixed discount expense, to the extent which such loss may exceed the loss which would have been incurred if the commitments had provided fixed discount expense corresponding with that fixed generally by institutional issuers of star by commitments, as determined by the Credit Corporation at the time of issuance of the commitment.

After discussion, on motion, duly seconded, it was unanimously

RESOLVED: That the proposed program of loans and commitments by U. S. Steel Homes Credit Corporation outlined in the preamble to this resolution be, and hereby it is, recommended.

RESOLVED: That acceptance by United States Steel Homes Division of United States Steel Corporation of the condition outlined in paragraph B in the foregoing preamble be, and hereby it is, authorized."

FINANCE COMMITTEE MEETING, AUGUST 25, 1959

Report on U. S. Steel Homes Credit Corporation

"There was presented a report summarizing the financial transactions and results of U. S. Steel Homes Credit Corporation.

There was also presented a report on the effects of the 1959 financial program on the sale of homes by United States Steel Homes Division of the corporation and a proposal to continue the financing assistance program recommended for 1959 by the Finance Committee December 16, 1958, with the undertaking that the special financing program may be called upon to support 1,600 sales for 1960 in an effort to assist United States Steel Homes Division in reaching a 2,500 units sales objective in 1960 or to support more sales if such objective is exceeded.

After discussion, on motion, duly seconded, it was unanimously

RESOLVED: That the continuance during 1960 of the program of loans and commitments by U. S. Steel Homes Credit Corporation referred to in the resolution of the Finance Committee of December 16, 1958, be, and hereby it is, recommended."

FINANCE COMMITTEE MEETING, AUGUST 16, 1960

"There was presented a report summarizing the financial transactions and results of U. S. Steel Homes Credit Corporation.

There was also presented a report on the effects of the Credit Corporation's 1960 financial program on the sale of homes by United States Steel Homes Division of the Corporation as recommended by the Finance Committee August 25, 1959, and a proposal by the Credit Corporation that it continue to make land acquisition, land development and construction loans (including special loans of such types in keeping with prudent business judgment as differentiated from conventional or conservative financing patterns) and that it continue to issue commitments for the purchase of FHA-insured and VA-guaranteed mortgages at fixed discount expense and hold and liquidate

mortgages acquired thereunder as promptly as may be practicable with minimum loss, if any, consistent with the limitation of the $33 million revolving fund established in 1956 to provide financing assistance to promote the sale of homes by United States Steel Homes Division, any loss incurred in the liquidation of mortgages acquired under any commitments providing fixed discount expense to be an expense of the Homes Division, and with the understanding that the special financing program may be called upon to support sales for 1961 in an effort to assist United States Steel Homes Division in reaching a 3,000 units or $10 million sales objective in 1961 or to support more sales if such objective is exceeded.

After discussion, on motion, duly seconded, it was unanimously

RESOLVED: That the continuance during 1961 of the program of loans and commitments by U. S. Steel Homes Credit Corporation, as proposed by it at this meeting, be, and hereby it is, recommended."

FINANCE COMMITTEE MEETING, MARCH 14, 1961

Report on U. S. Steel Homes Credit Corporation

"There was presented a report summarizing the financial transactions and results of U. S. Steel Homes Credit Corporation. The Chairman reported that inasmuch as the U. S. Steel Homes Credit Corporation is essentially limiting its mortgage purchase commitments to those of a 'standby' nature and adhering to its general policy of not holding mortgages as an investment, it had rescinded its previously established provision for acquisition and holding of FHA and VA mortgages up to a maximum of $33,000,000. He further reported the Credit Corporation had increased its bank borrowing maximum from $20,000,000 to $24,000,000 and advised the Committee that in the event of

increased bank borrowings for the conduct of its business the Credit Corporation would call upon this Corporation to advance it an additional $1,000,000 covered by promissory note subordinate to bank loans to the Credit Corporation, which additional advance is authorized by Finance Committee resolution of February 15, 1955.

After discussion, on motion, duly seconded, it was unanimously

RESOLVED: That the action of U. S. Steel Homes Credit Corporation as reported in the preamble to this resolution be, and hereby it is, endorsed."

FINANCE COMMITTEE MEETING, JULY 25, 1961

Increase Capital Stock of U. S. Steel Homes Credit Corporation

"The Chairman reported a proposal of U. S. Steel Homes Credit Corporation to increase its authorized capital stock from 50,000 shares of the par value of $100 each to 100,000 shares of the par value of $100 each.

After discussion, on motion, duly seconded, it was unanimously

RESOLVED: That the proposal of U. S. Steel Homes Credit Corporation to increase the amount of its authorized capital stock from $5,000,000, consisting of 50,000 shares of the par value of $100 each, to $10,000,000, consisting of 100,000 shares of the par value of $100 each, be, and hereby it is, recommended.

The Chairman presented for consideration the matters of the purchase by this Corporation of all or part of an additional 90,000 shares of the capital stock of the U. S. Steel Homes Credit Corporation and of an advance to the Credit Corporation of not to exceed $30,000,000. He stated that in the event such purchase and loan are authorized an

existing authorization of February 15, 1955 to purchase up to 10,000 shares of the capital stock of the Credit Corporation would be revoked, and that no further advances would be made to the Credit Corporation under authority of the same date.

After discussion, on motion, duly seconded, it was unanimously

Purchase Shares Capital Stock of U. S. Steel Homes Credit Corporation

RESOLVED: That the purchase by this Corporation, at such time or times as is authorized by the Chairman of the Board, the President, the Chairman of the Finance Committee, the Treasurer, or the Comptroller, of all or part of 90,000 shares of the capital stock of U. S. Steel Homes Credit Corporation at par value of $100 per share, be, and hereby it is, recommended.

Advance to U. S. Steel Homes Credit Corporation

RESOLVED: That the making by this Corporation of advances to U. S. Steel Homes Credit Corporation of up to $30,000,000, in the amount or amounts and at the time or times authorized by the Chairman of the Board, the President, the Chairman of the Finance Committee, the Treasurer, or the Comptroller, be, and hereby it is, recommended."

DIRECTORS' MEETING, JULY 25, 1961

"The Chairman of the Finance Committee presented the Committee's recommendation with respect to (a) a proposal of U. S. Steel Homes Credit Corporation to increase its authorized capital stock, (b) the purchase by this Corporation of additional shares of the capital stock of the Credit Corporation and (c) an advance by this Corporation to the Credit Corporation.

After discussion, on motion, duly seconded, the following resolutions were unanimously adopted:

Consent to increase in authorized capital stock of

U. S. Steel Homes Credit Corporation

RESOLVED: That the Chairman of the Board of Directors, or the President, or the Chairman of the Finance Committee, or any Vice President of this Corporation, be, and hereby he is, authorized and directed to execute and deliver on behalf of this Corporation, under the corporate seal of the Corporation, attested by its Secretary or any Assistant Secretary, a written instrument consenting to the amendment of the Certificate of Incorporation of U. S. Steel Homes Credit Corporation to effect change in the authorized capital stock of the said Credit Corporation from Five Million Dollars ($5,000,000), consisting of Fifty Thousand (50,000) shares of Capital Stock of the par value of One Hundred Dollars ($100) each, all of the same class to Ten Million Dollars ($10,000,000), consisting of One Hundred Thousand (100,000) shares of Capital Stock of the par value of One Hundred Dollars ($100) each, all of the same class.

Purchase Shares Capital Stock of
U. S. Steel Homes Credit Corporation

RESOLVED: That the purchase by this Corporation, at such time or times as is authorized by the Chairman of the Board, the President, the Chairman of the Finance Committee, the Treasurer, or the Comptroller, of all or part of 90,000 shares of the capital stock of U. S. Steel Homes Credit Corporation at par value of $100 per share, be, and hereby it is, authorized.

Advance to U. S. Steel Homes Credit Corporation

RESOLVED: That the making by this Corporation of advances to U. S. Steel Homes Credit Corporation of up to

$30,000,000, in the amount or amounts and at the time or times authorized by the Chairman of the Board, the President, the Chairman of the Finance Committee, the Treasurer, or the Comptroller, be, and hereby it is, authorized.

Revocation of Resolutions re
U. S. Steel Homes Credit Corporation Transactions

RESOLVED: That resolution of the Finance Committee of February 15th, 1955 authorizing the purchase at par value of $100 per share of up to 10,000 shares of the capital stock of U. S. Steel Homes Credit Corporation be, and hereby it is, revoked.

RESOLVED: That the authority granted by resolution of the Finance Committee of February 15th, 1955 to make advances to U. S. Steel Homes Credit Corporation be, and hereby it is, revoked."

NOTICE OF APPEAL.

Notice is hereby given that Fortner Enterprises, Inc., plaintiff, above named, hereby appeals to the United States Court of Appeals for the Sixth Circuit, Cincinnati, Ohio, from the Judgment entered in this action bearing No. 4392-A on the 15th day of January, 1964, and from the Final Judgment entered in this action bearing No. 4392 entered on September 7, 1966 and the Final Judgment entered in this action bearing No. 4392 on September 8, 1966 and from the Order Overruling Plaintiff's Motion to Set Aside and Reconsider the Motion for Summary Judgment bearing No. 4392 entered on October 5, 1966.

Kenneth L. Anderson
A. Scott Hamilton, Jr.
Counsel for Plaintiff

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DEPOSITION OF STANLEY J. MACK.

The deposition of Stanley J. Mack, taken on discovery, pursuant to agreement of the parties herein, in the offices of the United States Steel Homes Division, United States Steel Corporation, Charlestown Road, New Albany, Floyd County, Indiana, on August 17, 1964, at 3:00 P.M., upon oral examination, and to be used in accordance with the Federal Rules of Civil Procedure.

Appearances.

For the Plaintiff: Mr. Kenneth L. Anderson, Mr. Scott Hamilton, Jr.

For the Defendants: Mr. Albert F. Reutlinger, Mr. William H. Buchanan

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STANLEY J. MACK, called on behalf of the Plaintiff, after being first duly sworn by Lois Rutherford, Notary Public, State of Indiana, was examined and deposed as follows:

Direct Examination by Mr. Anderson.

Q. 1. You are Mr. Leonard J. Mack?

A. Stanley.

Mr. Reutlinger: Stanley.

Mr. Anderson: Stanley, excuse me.

Q. 2. And by whom are you employed at the present time?

A. United States Steel Homes Division.

Q. 3. And what is your position with United States Steel Homes Division?

A. Manager, Dealer Sales.

Q. 4. How long have you held that position?

A. I believe now approximately three years, two and one-half—three years.

Q. 5. Which would you mean that you obtained that position sometime in 1961?

A. I believe so, I would have to check to be sure but I believe so.

Q. 6. Prior to that time were you with the

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Homes Division?

A. Yes, sir.

Q. 7. What was your job then?

A. Manager of Sales Development I believe was the title then.

Q. 8. And how long did you have that position?

A. I would have to check it back but I think again that title was around 2 years.

Q. 9. And were you with the Homes Division prior to that time?

A. Yes, sir.

Q. 10. And in what capacity?

A. Assistant to the Vice President of Sales.

Q. 11. And how long did you have that job?

A. I'm going to guess again and say probably two years.

Q. 12. And were you with the Homes Division prior to that time?

A. Yes.

Q. 13. In what capacity?

A. Manager of Sales Training.

Q. 14. And how long did you have that job?

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A. Well I think that takes us back to about 1956 and I believe somewheres around a year and a half I had that title.

Q. 15. Were you with the Homes Division prior to that time?

A. No. Prior to that with U. S. Steel Corporation.

Q. 16. In what capacity?

A. Training Engineer.

Q. 17. Now let's, what was the last position or the first position that you had with the Homes Division?

A. Manager of Sales Training.

Q. 18. And what did your duties entail as Manager of Sales Training?

A. Well, at that time organized, organizing a sales training department and then instituting sales training programs.

Q. 19. Since—well, strike that. When you took that job was that a newly created position?

A. Yes, sir.

Q. 20. Who was your successor or was there one?

A. There was none.

Q. 21. Who took over the functions which you had previously?

A. I retained them.

Q. 22. You retained them and throughout the changes in job titles since then you have retained those same duties?

A. More or less, yes.

Q. 23. Now take me back here to the time in 1959, 1960, would you tell me again what your position was then?

A. Well, I'm trying to get a sequence straightened out here.

Q. 24. I am too.

A. I started to give you the background, I came up from the Corporation and I believe the year was 1956, '56 or '57 to establish a training department for the Homes Division and I was in the Training Section, United States Steel Corporation and I came here as Manager of Sales Training.

Now I was in that capacity for I'd say about a year and a half. Then the then Assistant to the Vice President of Sales was transferred and I was promoted to his job still retaining along with the new responsibilities the responsibility for Sales Training.

Somewheres along in there and I believe probably it must have been about '60 or '61 my title

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was changed to Manager of Sales Development retaining principally the same function and responsibilities I had had before but assuming other administrative responsibilities.

Q. 25. So if I understand correctly then the duties which you had had as the Assistant to the Vice President in charge of Sales were replaced by your duties as Manager of Sales Development?

A. Essentially as Manager of Sales Development. I retained duties I had as Assistant to the Vice President of Sales, yes.

Q. 26. I see.

A. And picked up additional duties.

Q. 27. All right. Was, after you became the Manager of Sales Development did someone step in and take the title of Assistant to the Vice President in charge of Sales?

A. At one period, yes, but not immediately as I recall.

Q. 28. That would have been Mr. Cowart?

A. Right.

Q. 29. Then your next position after a couple of years was the title of Manager of Dealer Sales?

A. Right, which is the current title.

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Q. 30. Now when you established this Sales Training Program would you tell us what that Sales Training Program in 1956 and 1957 entailed?

A. Well, it wasn't just a program, one program but rather it was a responsibility to establish a program for sales trainee, that is trainee salesmen, to establish programs for training dealer salesmen, essentially those were the two categories.

Now there were several programs that were developed along the line to assist in the training of these personnel. For example, writing presentations, slide presentations and a training program that may take two or three days to put on. Going out to the dealer's organization and working with his salesmen, teaching him the advantages of our products.

Q. 31. Well, let's start back with 1956 or '57 when you got your program rolling, shall we say. Did you have beginning at that time as far as the Homes Division's own salesmen were concerned, did you have a series of seminars or a series of classes for not only the fledging trainees but also the already experienced salesmen?

A. We had occasional, yes, refresher courses.

Q. 32. Could you tell us about how often

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those would take place?

A. Well, we are going back quite a few years. Oh, possibly once every three or four months.

Q. 33. I, had that type of program for trainees and the veteran salesmen continued let's say up to the present day?

A. No. I'd say it has tapered off.

Q. 34. When did it start tapering off?

A. Well, keeping in mind that the training department at the time consisted of myself and the secretary and as I got additional duties I had less time to spend on the training so as a result why we did less training.

Q. 35. You mentioned a moment ago in your testimony the preparation of presentations. I assume that that would

mean the writing out of talks or speeches or discussions to present to your salesmen at seminars or sales meetings or meetings?

A. Yes.

Q. 36. Of that nature?

A. (Witness nodding head in the affirmative.) That would be one part of it, yes.

Q. 37. And would you yourself prepare these presentations?

A. Not all. I would use the assistance

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of other members of the Sales Department or operations as the case may be depending on what topic I wanted to cover.

Q. 38. And can you give us any idea of how many presentations, written presentations were prepared from the period that you started the training program through 1962?

A. I don't, I don't know how I could, no.

Q. 39. Did you or have you retained the copies of each of those written presentations?

A. Some undoubtedly. Others have been thrown away because we don't try to retain things for 7 or 8 years. I may have some that go back that long but by accident.

Q. 40. Would it from your knowledge be possible that copies of some of these presentations which you now no longer have in your file be in the Main files at Pittsburgh?

A. Oh no.

Q. 41. They—

A. (Interrupting) No, I don't think so because they do not get copies of them. Again keep in mind that what we had was a master book each man would

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read his presentation from the book, read his presentation from the book. Once the presentation was given we may have kept it in the file for awhile and then discarded it.

Q. 42. Now this—.

A. (Interrupting) Some may have been retained. I wouldn't know now.

Q. 43. This blue notebook which Mr. Reutlinger has previously shown us briefly today, I believe it was obtained from your files, is that correct?

A. Right.

Mr. Reutlinger: (Passing document to witness.)

A. (Viewing document) Yes, yes.

Q. 44. Would this, would the material in this blue notebook and also the material in the black binder underneath it represent the copies of the presentations which you have retained to this date?

A. Yes, I believe this is mine.

Q. 45. Well, I mean this would be all of the copies of the presentations that you have retained?

A. Yes.

Q. 46. There would be none in any other of your files?

A. Not in my files, no.

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Q. 47. Would there be any presentations in other members of the Sales Staff files to your knowledge?

A. I don't know. Normally, I would say no since I usually keep them.

Q. 48. One of these presentations has been identified as having been given by Mr. Day. Are you aware of that?

A. Yes.

Q. 49. Do you recall Mr. Day's position at the time he gave that presentation?

A. I'm not sure but I think he was Manager of Field Sales, but again I'm not sure about that. He had that title I believe at one time.

Q. 50. Did, strike that. Do you recall his giving that particular presentation?

A. Yes, I think so vaguely.

Deposition of Stanley J. Mack

Q. 51. Would you recall at this time, well let's say what year the presentation was given?

A. No, I would have to look at the date but I would guess probably around—let's see, about 1960 or '61 I would guess.

Q. 52. All right.

Mr. Reutlinger: You want this last

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page—

Q. 53. Referring to the last page—

A. (Viewing document) '61.

Q. 54. Would that date March 27, 1961 indicate to you that on or about that time that particular presentation was made?

A. I would say yes.

Q. 55. Well the, was this presentation presented at a regular seminar established by you for the Homes Division Salesmen?

A. It was a part, if I recall correctly a week of sales meetings and this was a part of that sales meeting.

Q. 56. Now the presentation, of course, was written up prior to it being given by Mr. Day at the meeting?

A. Right.

Q. 57. And was it shown to you ahead of time?

A. Yes.

Q. 58. And was it approved by you?

A. Well, approved in the sense that I was in charge of the program, yes.

Q. 59. To your knowledge was it also shown

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to Mr. Black?

A. To the best of my knowledge, yes sir, but I might add that it wasn't a case of approving or disapproving the material that was in it but rather as a part of the overall program that was being given to the salesmen at that time.

Q. 60. But this certainly was a part of the program?

A. Oh yes.

Q. 61. Presented to the salesmen?

A. Yes, yes.

Q. 62. And the program, of course, was designed as a part either of an initial training course or refresher course?

A. It was a refresher.

Q. 63. Prior to the preparation of the presentations if those presentations involved the financing aspects of a salesman's job for Homes Division, would you or Mr. Black or some other member of Management consult with the Credit Corporation Representatives as to the policies of the Credit Corporation?

A. Would we consult with them?

Q. 64. Yes.

A. Chances are yes.

* * * * * * *

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Q. 132. Well now my question was more or less a two pronged question. As far as you know it was the policy of the Homes Division not to pay for the labor for correcting defects.

A. That's right.

Q. 133. Is that correct?

A. (Witness nodding head in the affirmative.)

(Off the record remarks.)

Q. 134. Mr. Mack, this looseleaf notebook I believe you have already identified but I would like to do it again for the record as being documents which were taken from your files or the notebook was taken from your files and is a book that you kept over the years in your files, in your capacity as a member of Management of Homes Division?

A. Yes. I don't know whether this was this spe-

cific book but I undoubtedly had one either exactly like this or very similar to this in my files.

Q. 135. But the documents contained in this notebook itself are copies of presentations and—

A. (Interrupting) Are the training programs, refresher training programs for salesmen, yes, sir.

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Q. 136. All right.

Mr. Anderson: We would like to make the entire book Exhibit A to your deposition.

Mr. Reutlinger: (Nodding head in the affirmative.)

Mr. Anderson: We will ask Mr. Pyevac to make copies of each page in there and a copy for the original of the deposition and return the original book to Mr. Reutlinger.

Mr. Reutlinger: Yes.

* * * * * * * *

FROM EXHIBIT "A" OF "MACK" DEPOSITION.

TRAINING COURSE

Financing

Some of you Sales Representatives know quite a bit about the intricacies of financing, perhaps more than your instructor. Others of the newer men have a pretty good working knowledge of the subject. Some of you former Product Service Representatives have had enough exposure to at least have an idea of what is involved and some of you konw nothing at all about financing.

For the next three days, we are going to approach the various phases of financing just as though all of you were starting from "scratch."

Do not expect to become experts in three days. It will still take actual practice to really become proficient. I do feel, however, that we can cover enough of the basic funda-

mentals in the next three days in order for you to do a creditable job. Incidentally, you will be given a copy of the material I plan to cover so you won't have to make notes on the subject. I do suggest, however, as we proceed that you make a note of any question you wish to ask, or any portion that isn't clear to you. We'll have a question break later.

We will cover the four basic phases of home financing and they are: 1. Permanent Mortgage Financing; 2. Construction Financing; 3. Land Development Financing; and 4. Land Acquisition Financing.

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DEPOSITION OF NEIL G. DAY.

The deposition of Neil G. Day, taken on discovery pursuant to agreement of the parties herein, in the offices of the United States Steel Corporation, New Albany, Floyd County, Inidana, on August 18, 1964 at 1:30 P.M. and to be used in accordance with the Federal Rules of Civil Procedure.

Appearances.

For the Plaintiff: Mr. Kenneth L. Anderson, Mr. A. Scott Hamilton, Jr.

For the Defendant: Mr. Albert F. Reutlinger, Mr. William H. Buchanan.

NEIL G. DAY, called on behalf of the Plaintiff and, after being first duly sworn by Mr. William J. Leonard, Notary Public, State at Large, Indiana, was examined and deposed as follows:

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Direct Examination by Mr. Alexander.

Q. 1. You are Mr. Neil G. Day?

A. Right.

Deposition of Neil G. Day

Q. 2. What is your home address, sir?

A. Floyd Knobs, Rural Route 1, Floyd Knobs, Indiana.

Q. 3. By whom are you employed at the present time?

A. US Steel Homes Division.

Q. 4. For the purposes of shortening things a little bit, if we can call that the Homes Division from now on?

A. Right.

Q. 5. How long have you been employed by the Homes Division?

A. Since June 1, 1955.

Q. 6. When you first came with the Homes Division in 1955, what was your job?

A. I was then called District Manager and am now called Sales Representative, State of Iowa.

Q. 7. During the period of 1958, '59 and '60, what was your title?

A. Manager of Field Sales.

Q. 8. As Manager of Field Sales, what were your duties?

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A. To assist the sales, field sales department, people in the field in their regular duties, employees or recommended employment of trainees and trained those people in our Sales Department functions, principally.

Q. 9. Were you, in effect, in charge of the field sales personnel?

A. Only in administrative capacity. Actually carrying out the, under the direction of Mr. Black who was our Vice President of Sales, carrying out the field functions as field sales manager.

* * * * * * *

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Q. 99. Now Mr. Day, we have been informed by Mr. Rollins earlier in the day that it is his understanding that

you made a speech which I have identified as Document #240, obtained from the files of the Homes Division. I am sure in consulting with counsel that you are familiar with that document. Is that correct?

A. Yes, sir.

Q. 100. And is it correct that you made the speech which appears as an attachment to Mr. Boyd's letter to Mr. Russell of August 1, 1962?

A. I am not familiar with Mr. Boyd's letter. Is that attached to that? (Viewing documents).

Q. 101. Well, I'm not asking you about the accuracy of Mr. Boyd's letter. I am just asking you if the speech to which I have referred is that one that, that is attached to this particular letter was made by you?

A. Oh yes, yes, sir.

Q. 102. Can you tell me when the speech was made?

A. Exactly, no.

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Q. 103. Well, approximately?

A. Well, exactly, no.

Q. 104. Well, can you look at the last page, it might be of some assistance to you.

A. (Viewing document) March 27, 1961, it says.

Q. 105. Now I don't want you to be hasty in answering the question. The—I referred you to that because I don't know what this is.

A. I said that is what this says.

Q. 106. Yes. Now does that assist you in any way in establishing approximately when this speech was made?

A. I can only assume that this was the date on which I made it.

Q. 107. Would that approximate date accord with your recollection?

A. Well, it could be that date.

Q. 108. Could you tell us where—strike that. Could you tell us to whom the speech was made?

A. Yes, to the field salesmen.

Q. 109. And where was this speech made?

A. In the seminar room downstairs here.

Q. 110. And what was your title at that time?

A. Well, this is difficult. I, this is—about the time that this change was made, and I think that I had been changed at that time to my present position of Sales Development Representative, I think, I am not sure.

Q. 111. Could you tell us whether or not all of the field salesmen were present at that meeting?

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A. I can't say definitely. I'd say they were all invited.

* * * * * * *

Q. 114. Was anybody else present besides the field salesmen?

A. There could have been other people in and out of the meeting, although that was primarily the group interested in this particular presentation.

Q. 115. Were any representatives of the Credit Corporation present to your knowledge?

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A. No.

Q. 116. Did your duties as Manager of Field Sales include the instruction of field salesmen as to methods of sales and duties and so forth?

A. Yes.

Q. 117. After your change in position to—what is your title now?

A. Sales development representative.

Q. 118. To sales development representative, did you continue in, to give instructions as to the, or rather to field salesmen as to how to do their job, in effect?

A. No.

Q. 119. Unless it was requested?

A. Yes.

Q. 120. Was this one of the situations where you were requested to by your superiors to give instructions to the homes Division field salesmen?

A. As I recall, that's right.

Q. 121. And who would have requested you to do this, Mr. Black?

A. (Witness nodding head in the affirmative.)

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1

DEPOSITION OF EDWARD L. AKERS.

The deposition of Edward L. Akers, taken on discovery, pursuant to agreement of the parties herein, in the office of the United States Steel Homes Division, United States Steel Corporation, Charlestown Road, Now Albany, Floyd County, Indiana, on August 17, 1964, at 4:00 P.M., upon oral examination, and to be used in accordance with the Federal Rules of Civil Procedure.

Appearances.

For the Plaintiff: Mr. Kenneth L. Anderson, Mr. A. Scott Hamilton, Jr.

2

For the Defendants: Mr. Albert F. Reutlinger, Mr. William H. Buchanan.

EDWARD L. AKERS, called on behalf of the Plaintiff, after being first duly sworn by Lois Rutherford, Notary Public, State of Indiana, was examined and deposed as follows:

Deposition of Edward L. Akers

Direct Examination by Mr. Anderson.

Q. 1. You are Mr. Edward L. Akers?

A. Yes.

Q. 2. What is your home address, sir?

A. 3609 Green Valley, New Albany.

Q. 3. By whom are you employed?

A. By whom?

Q. 4. Yes.

A. U. S. Steel Homes Division.

Q. 5. What is your position at the present time?

A. Manager—Customer Service Division.

Q. 6. How long have you held that position?

A. Approximately ten years in this position with some changes of responsibility.

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Q. 7. What are your responsibilities or duties as of the present time?

A. Well, as it implies Dealers Service, servicing dealer accounts, plans, complaints.

Q. 8. Have those generally been your duties during the past ten years?

A. No, no.

Q. 9. When did they change and what were they prior to the change?

A. I had some added responsibilities in the last two years which increased that responsibility.

Q. 10. What were the added responsibilities?

A. Directly handling field complaints.

Q. 11. Could you tell us when you first had the responsibility of directly handling field Complaints? In other words, what date it took place?

A. It's a little hard to answer really. I can't give you a specific date.

Q. 12. Well, can you give me a, an approximate date?

A. I would say in the last ten years I have had the responsibility of some portion of the field complaints, not all of it, not all of them.

Q. 13. Well, in recent times have you

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been put in charge of all field complaints?

A. As far as the internal handling of those field complaints are concerned.

Q. 14. Well, when did that take place approximately?

A. Three years ago.

Q. 15. Approximately July of 1962?

A. No, January of 1963.

Q. 16. Other than yourself prior to that time who had the responsibility for field complaints?

A. I had a portion of them. There was another gentleman who had, who also handled a portion of them.

Q. 17. Who was that?

A. Charles Schultz.

Q. 18. What was Mr. Schultz's title with the Homes Division?

A. I can't answer because I, I don't know his title specifically, I don't know, I don't know his title specifically.

Q. 19. Did Mr. Schultz leave Homes Division in or about January of 1963?

A. Yes.

Q. 20. What were the circumstances surrounding his leaving the employ of the Homes Division?

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A. Well, I have no idea really.

Q. 21. You don't have any idea?

A. No, I do not.

Q. 22. Do you know where Mr. Schultz is now?

A. You mean within the Falls City?

Q. 23. Where he is living?

A. I know he lives in Jeffersonville, yes.

Q. 24. Do you know by whom he is employed now?

A. No, I do not.

Mr. Anderson: Mr. Reutlinger, would the Homes Division files per chance have the home address of Mr. Schultz?

Mr. Reutlinger: I suppose they would at the time he was employed if they still have those files. They wouldn't necessarily be current.

Mr. Anderson: Well, whatever the last address they have, if you would furnish it to us we would apperciate it.

Mr. Reutlinger: All right.

(Off the record remarks.)

Q. 25. Going back to your duties in 1960

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and '61 and 1962 as I understand it then you had the responsibility for at least some of the dealer complaints during that particular period?

A. Yes, sir.

Q. 26. Now, other than dealer complaints were you the person in charge of dealer service insofar as the assisting the dealer with plans and things of that nature were concerned?

A. With plans, yes. Now, I'm not sure what you mean by things of that nature.

Q. 27. Well, maybe why don't you tell me if you will elaborate a bit more on just what your day to day job was, what you did in the years, '59, '60, '61 and '62?

A. Plans we have mentioned. If the dealer has a cause of complaint in error of shipment that would be, those two would be basically it.

Q. 28. Well now let's say errors in shipment which you mentioned. Would that involve every dealer?

A. Yes.

Q. 29, You have the complete responsibility for shortages or, in a package?

A. (Witness nodding head in the affirmative.)

Q. 30. Or items not shipped according to the plans in fact?

A. Right.

Q. 31. During the period of time 1960, '61 and '62 I assume that you then had occasion to come in contact with the Fortner Enterprises?

A. Yes.

Q. 32. Did you have many or few contacts with Fortner Enterprises in connection with shortages or errors in shipment of packages?

A. Well, many or few are sort of relative.

Mr. Reutlinger: Do you feel much or little pain, huh?

Q. 33. Well, any means that you can use to give us an idea, I am not committed to few or many.

A. No, no more than any other average dealer.

Q. 34. What was the procedure which you followed during this particular period, let's say when a representative of Fortner Enterprises called and says I, such and such a piece is missing out of a package or such and such a stud is the wrong length or something of that nature, what internally happened after that within

the Homes Division?

A. Well, number one, we would, we would attempt to see if the piece he claims is an error is due to his fault, maybe he is using it wrong. If he is using it correctly we try to determine if we shipped it wrong out of here, if we did we would make a correction.

Q. 35. Would you make an on-site inspection to determine this?

A. Not necessarily.

Q. 36. How would you determine whether the builder was using a particular item correctly or not without an on-site inspection?

A. Well, by questioning the dealer.

Q. 37. If it were determined either that the dealer had already used the piece and due to his own fault in some place else or that the piece hadn't been shipped or the proper piece had not been shipped did you make out some sort of a miscellaneous sales order or invoice and then ship the necessary item over?

A. If he so stated he was to purchase an additional piece of material we would then make out a Sales Order.

Q. 38. What would happen if it were determined by you that the Homes Division in preparing

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a particular home package had left out a particular piece or had sent the wrong piece what type of document would be prepared in that instance?

A. The same type of document, however, the the notation that if this is the case the material was shorted and in such case it would be given him with no charge. If we shipped the wrong type of material we would make a billing to him pending the return of the material that he had which he didn't need.

Q. 39. Now were these documents that were filed out to get the necessary pieces over, over to the dealer entitled Miscellaneous Sales Orders?

A. Yes, sir; yes.

Q. 40. And I believe that you would on occasions if it were determined that it was the responsibility of Homes Division, put on that Miscellaneous Sales Order the particular Division of Homes Division to whom the responsibility should be attributed?

A. Yes.

Q. 41. Would such a Miscellaneous Sales Order be prepared in every instance in which a particular component

part was replaced by another component part by Homes Division?

A. Yes.

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Q. 42. Would such a Miscellaneous Order be prepared on every occasion in which Homes Division had simply omitted a particular component part?

A. Yes, sir.

Q. 43. And these particular matters during the years '59, '60, '61 and '62 were your direct responsibility?

A. Yes.

Q. 44. Would the sales representatives relate to you on occasions with regards to Fortner Enterprises in particular complaints by Fortner Enterprises about incorrect component parts or would all such complaints be made directly to you by telephone or personal contact?

A. It came both ways, through the field representatives and direct to me.

Q. 45. Was it your policy always to put on a Miscellaneous Sales Order the Division of Homes Disvision to whom the responsibility for a shortage or an error was attributable or were there occasions on which you would not necessarily place a responsibility in which you would therefore not put a notation of the responsibility on the Miscellaneous Sales Order?

A. State that again.

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Q. 46. I will restate it, it's very complicated. What I am driving at is this; we have been furnished the Miscellaneous Sales Orders that were in the Homes Division files.

A. Uh-huh.

Q. 47. A number of those Miscellaneous Sales Orders attributed responsibility to Shipping or various other branches of Homes Division. There are other Miscellan-

eous Orders which bear the entry N.C. which I assume means no charge. Is that correct?

A. That's correct.

Q. 48. Which do not have a notation of, as to what branch of whom Homes Division had the responsibility for their error. That would be correct, would it not?

A. It was more or less an unwritten policy that such a notation be placed on all orders if we knew the responsibility. However, I am sure they were not all put on there just due to Personnel involved in typing the orders.

Q. 49. And there would also be occasions where you could not necessarily pinpoint the responsibility?

A. True.

Q. 50. On the occasions when, strike that. To refresh your recollection as far as Fortner Enterprises

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was concerned there were occasions when components were just omitted from a home package?

A. I have to answer this only in the law of averages that he undoubtedly would have had some omissions from packages. Specifically, I do not know.

Q. 51. On the occasion when such was the case when there was some omissions would you, of course, prepare Miscellaneous Sales Orders and send over the necessary components that had been omitted?

A. Yes.

Q. 52. As far as you were concerned the matter was then closed?

A. Yes.

Q. 53. Did you during this period of time '59 through '60 ever authorize or have authority to authorize reimbursement to Fortner Enterprises for the delay involved in getting the missing component parts over to them so that they could complete the erection of the particular home package?

A. I can't recall that we made such an authorization, no, sir.

Q. 54. Would you have had the authority to make such an authorization?

A. I would have the authority, yes.

Q. 55. Likewise in connection with a

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component being shipped let's say the wrong size component where it was necessary for the component to be replaced did you ever authorize to your recollection the, any payment to Fortner Enterprises as a result of the delay resulting in their having to get this replacement component and install it?

A. I can't recall that instance, no.

Q. 56. Was it the policy during that particular period of the Homes Division not to pay for, pay dealers for additional cost incurred by them as the result of the omission of a particular component or the incorrect inclusion of a wrong component or something of that nature?

A. Our responsibility would be replacing materials only.

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1

DEPOSITION OF HARRY R. BLACK.

The deposition of Harry R. Black, taken on discovery, pursuant to agreement of the parties herein, in the office of the United States Steel Homes Division, United States Steel Corporation, Charlestown Road, New Albany, Floyd County, Indiana, on August 18, 1964, at 10:30 A.M., upon oral examination, and to be used in accordance with the Federal Rules of Civil Procedure.

Deposition of Harry R. Black

Appearances.

For the Plaintiff: Mr. Kenneth L. Anderson, Mr. A. Scott Hamilton, Jr.

2

For the Defendants: Mr. Albert F. Reutlinger, Mr. William H. Buchanan.

HARRY R. BLACK, called on behalf of the Plaintiff, after being first duly sworn by Lois Rutherford, Notary Public, State of Indiana, was examined and deposed as follows:

Direct Examination by Mr. Anderson.

Q. 1. Mr. Black, would you give us your full name, please?

A. Harry R. Black.

Q. 2. What is your home address?

A. 2523 Glenwood Park, New Albany, Indiana.

Q. 3. How long have you—well, by whom are you employed?

A. By the United States Steel Homes Division of the United States Steel Corporation.

Q. 4. How long have you been working for the Homes Division?

A. For the Homes Division about 9 years, since November 24, 1952 but I left to go to another

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Subsidiary and came back.

Q. 5. What is your position at the present time?

A. I am Vice President, Operations.

Q. 6. How long have you had that position?

A. Since February, 1962.

Q. 7. And prior to that time what was your position?

A. Immediately prior to that time?

Q. 8. Yes.

A. Vice President of Sales.

Q. 9. How long did you hold the position of Vice President of Sales?

A. From January, 1960.

Q. 10. Prior to January, 1960 what position did you have with the Homes Division?

A. General Manager of Sales from November, 1957.

Q. 11. Prior to that, what was your position?

A. I was Treasurer for one month prior to that of this Division.

Q. 12. And then what was your position prior to that?

A. Prior to that I was Assistant General Manager of the Credit Corporation, from 1950—from March, 1954 to October, 1957.

Q. 13. Prior to that?

A. I was Vice President and Treasurer of this Division from July, 1953.

Q. 14. Were you with U. S. Steel prior to 1950—July of 1953?

A. For a period, yes. From November 24, 1952.

Q. 15. What was your position then?

A. Well, it is a rather nebulous thing. I was, I guess the best way to describe it, I was Executive Assistant to the President of this Division.

Q. 16. As the Assistant General Manager of the Credit Corporation were you based in New Albany or elsewhere?

A. Based in New Albany.

Q. 17. So that I take it you have lived in New Albany since 1952?

A. No. For a period of one year we moved the Executive Offices, moved from here to Pittsburgh and back again. In 19, I think it was in 1959 to sometime in 1960, a period of one year. Other than that,

I have been based here, either in New Albany or Louisville and I was in Louisville for about a year when I first came down and then came across the river. Then went to Pittsburgh and in '59 I think for about a year, and then back here.

Q. 18. As the Assistant General Manager of the Credit Corporation from March of 1954 to October of 1957 you, of course, became quite familiar with the policies of the Credit Corporation?

A. That's right.

Q. 19. At that time who were your superiors?

A. Dick Dyas and Bill Lang.

Q. 20. They had been in the top two Executive Positions with the the Credit Corporation for a number of years?

A. Since the inception of the Credit Corporation.

Q. 21. And were you the next man in the chain of command in the Credit Corporation?

A. That is right.

Q. 22. I take it that their offices were located in New York?

A. That's correct.

Q. 23. While you were the Assistant General Manager of the Credit Corporation did you participate

in making of the policies with Mr. Dyas and Mr. Lang insofar as the Credit Corporation was concerned?

A. I did.

Q. 24. During that period were you active in communicating that policy to the representatives of the Homes Division?

A. I was.

Q. 25. In 1957 when you became the General Manager

of Sales for the Homes Division would you tell us what your responsibilities were and who your superiors were?

A. Well, my responsibilities were generally in line with the Vice President of Sales job and that is I was responsible for the sale of products and the marketing of the products manufactured by U. S. Steel Homes. My immediate superior was Dave Boyd, the President. Well, let's see, when I first took it over in November it was Doug Moulton who was the President of the Division at that time.

Q. 26. And then Mr. Boyd succeeded Mr. Moulton as President of the Division?

A. That is correct.

Q. 27. Then in 1960 you became the Vice President in charge of sales?

A. That is correct.

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Q. 28. And this was actually as I understand the change in title without really much change in the responsibilities?

A. No change in responsibilities.

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Q. 43. During the period when you were General Manager in charge of Sales and which you were Vice President of Sales I believe there was established that a salesman, a salesman training program?

A. When I originally took over the Sales Department there was a man in the Sales Department, Stanley Mack, who had been brought in here and his basic job was training sales personnel.

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Q. 44. All right.

A. I did not know him at the time I came in because I was transferred up here and he continued in that capacity

until I transferred him to what I felt was more of an Assistant to me.

Q. 45. Well, did he continue to have some training responsibilities after that even?

A. Somewhat. When I came into the Sales Department as General Manager of Sales there was a greater need for training. I think the Sales Department had about 30 salesmen on the road and under the reorganization I cut that down from 30, I think, to about 8 within a period of two or three weeks therefore the need for an extensive training program no longer existed, but Mr. Mack did assist in the training of any new personnel we brought into the Sales Department.

Q. 46. During this period of '57 through 1960 did the Sales Department conduct more or less periodic seminars or meetings of their salesmen to refresh them and bring them up to date on company policies and procedures?

A. That's correct. Maybe every three months we liked to get them in here because they are all operated away from the office and it was advisable to get them in and kind of bring them up to date on

policies and procedures and sales facts.

Q. 47. Are the, I take it the presentations that would be made to these salesmen and these refresher courses might be made by you or by Mr. Mack or others?

A. That's right.

Q. 48. Representatives of the Sales force?

A. Somebody that I chose that I felt was familiar with that particular aspect of the sales problem.

Q. 49. And would these presentations usually be written out ahead of time?

A. Ordinarily there would be one or two transcripts of it in order that I might review it and Mr. Mack might review it and the, the talks were usually given from a

mimeographed speech so that we had some outline, an agenda for a meeting is generally what it was.

Q. 50. Right, and would you review these verious presentations ahead of time?

A. I would, I would imagine so. I don't think I let anything go out without at least giving it some cursory review anyway, without looking at it somewhat.

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Q. 51. After your transfer—well now my previous question actually was phrased through 1960 but actually it should have been phrased through 1962. The same answer would be applicable, I believe?

A. Same answer would be applicable, because there was no change in responsibility in change of title.

* * * * * * *

Q. 53. * * * I believe that the Credit Corporation is a separate corporate entity from the United States Steel Corporation. Is that correct?

A. It is a wholly owned Subsidiary.

Q. 54. But it is a separate corporate entity?

A. That's right.

Q. 55. Do you know the purpose for which the Credit Corporation was established?

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A. Yes, I do.

Q. 56. What was that?

A. To assist our dealers in the financing of their building programs.

Q. 57. And I believe that in some instances this would include land acquisition, financial assistance?

A. It included assistance in that avenue.

Q. 58. It also included construction financing?

A. It could.

Q. 59. And it could also include the actual purchasing of the individual mortgages?

A. Under certain conditions, yes, sir.

Q. 60. Did the Executives of the Credit Corporation during your tenure as Vice President in charge of Sales participate in policy making insofar as Homes Division was concerned?

A. Not to my knowledge.

Q. 61. That would include the establishment of prices?

A. Definitely not.

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Q. 62. The type of home to be built by the Homes Division?

A. Definitely not.

Q. 63. During your tenure as General Manager and Sales and Vice President in charge of Sales I would assume that the original or would it be correct to state that the policies and programs of the Credit Corporation were communicated to you?

A. Yes, sir; they were.

Q. 64. And during that period of time you were, of course, fully aware of their policies and programs?

A. Yes, I was.

Q. 65. During the period of time that you were in charge of Sales as Vice President or General Manager would it be fair to state that the Credit Corporation was used as a sales tool by the Homes Division?

A. I would say yes. It has assisted us in our commercial endeavors, yes.

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Q. 76. I show you a document which has previously been identified as C-24 dated September 22, 1960 which was

taken from the Credit Corporation files and ask you if you can identify that, sir?

A. (Viewing document) Yes. This is, this did come from me.

Q. 77. I would take it that as far as you were concerned the Fortner Enterprises Project was the means of obtaining an entry into the so-called Louisville Market?

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A. An additional entry, yes.

Q. 78. And for that reason among others you recommended the additional financial assistance which is described in this letter?

A. Yes.

Q. 79. Mr. Black, I show you another document dated June 5, 1961 which we have identified as C-7 which comes from the Credit Corporation files and ask you if you can identify that?

A. (Viewing document) Yes.

Q. 80. So that is the memorandum from you to Mr. Boyd?

A. That's correct.

Q. 81. I believe this resulted from Fortner Enterprises needing additional financial assistance?

A. Would you, would you repeat the question, please?

Q. 82. I believe this resulted from Fortner Enterprises, Incorporated needing additional financial assistance?

A. That is correct.

Q. 83. As far as you were concerned that, as of this time Fortner Enterprises was doing certainly a satisfactory job of building and selling the Homes Division products?

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A. Yes.

Q. 84. I show you a document which has been identi-

fied as C-8, dated June 17th—13, 1961, taken from the Credit Corporation files and ask you if you are familiar with that?

A. (Viewing document) Yes, I'm familiar with it.

Q. 85. That letter I take it was written as a result of your memorandum of June 5, 1961 which we have already identified?

A. Yes.

Q. 86. This was a rather unusual request to your recollection to the Credit Corporation?

A. I wouldn't say that it was unusual but it isn't usual. In other words, we had other requests along the same line.

Q. 87. This is not the everyday transaction that the Homes Division requests the Credit Corporation to follow through with?

A. That's correct.

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Q. 101. Mr. Black, I will show you a document which we have identified as a number 55 dated March 3, 1960 and ask you if you are familiar with that document?

A. (Viewing document) Yes, I can identify it.

Q. 102. Of course, that is a memorandum written by Mr. Boyd to you, I believe?

A. That is correct, after a call from Mr. Dyas.

Q. 103. And have you discussed this particular question with Mr. Boyd personally either before or after the memorandum was written?

A. I can't remember.

Q. 104. During this particular period of time would it be correct to state that this transaction was regarded by Credit Corporation as sort of like out of line of the regular business and that was the reason that they requested this indemnity agreement shall we say on the part of the Homes Division?

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A. Mind if I read this again?

Q. 105. Certainly.

A. (Viewing document) Can you repeat the question now so that I can—

Mr. Anderson: All right, read it back.)

(Reporter reads Q. 104. back.)

A. I would say that is correct, they were asking for more than what we considered the usual use of Credit Corporation.

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Q. 136. As I understand it you had decided on a series of models for a particular year, decided on the types of components that will be used to build the packages including the types that will have to be purchased from outside and then how was it, how was the price arrived at for the various packages?

A. Well, we are on a standard cost estimation here and the Industrial Engineer turned in his cost of manufacturing materials in the plant. The Purchasing people turn in their cost of buying materials, these are turned into the Accounting Department and they come up with a standard mill cost.

Q. 137. Well, obviously you don't sell the house for, for the standard cost?

A. That's correct.

Q. 138. How was the price then determined?

A. There is then an application of a mark up applied to the standard mill cost.

Q. 139. For the years 1960, '61 and '62 what was the standard mark-up used?

A. I don't remember.

Q. 140. Would you have in your files

information that you could furnish to us?

Mr. Reutlinger: We object and instruct the witness not to answer if he has it. If he don't have it tell. If you have it—

A. I could possibly have it.

Mr. Reutlinger: Well, instruct him not to answer.

Mr. Anderson: Certify the question.

(Whereupon Q. 140. was certified to the court for ruling.)

Mr. Reutlinger: 19—what year was it?

Mr. Anderson: '59, '60 and '61.

Mr. Reutlinger: No '62?

Mr. Anderson: '62 also.

Mr. Reutlinger: Got some deliveries in '62.

Mr. Anderson: Yes. We would have '62.

Mr. Reutlinger: Let me interject one question here. Is this accounting done here or is it done in the Pittsburgh Office?

The Witness: It's done here.

Q. 141. Now, sir, during this particular period of time, '59 through '62, who was in charge of

the Accounting Department?

A. William Lewellen.

Q. 142. Is he still with the Company?

A. He is.

Q. 143. Does he still have the same position or is he—

A. I think at the time he was Assistant Comptroller and now he is Comptroller. I'm not sure but he was always the Executive in charge of the Accounting Department in those years.

Q. 144. Of course, in addition to your standard cost you had other overhead costs, during this particular period, would that be correct?

A. This is correct.

Q. 145. But your mark-up was based on the standard cost?

A. Standard mill cost.

Q. 146. To your knowledge in addition to the overhead of the Homes Division was it or were other expenses allocated to the Homes Division?

Mr. Reutlinger: Objection.

Q. 147. (Continuing) —by the United States Steel?

Mr. Reutlinger: Objection and instruct the witness not to answer and let the question be

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certified.

Mr. Anderson: Right.

(Whereupon Q. 146. and Q. 147. were certified to the court for ruling.)

Q. 148. Taking into consideration your overhead expenses and possible allocation of expenses to the Homes Division from United States Steel during this particular period of time about which I have been questioning, questioning you were your homes or some of them being sold at less than the overall cost?

Mr. Reutlinger: Object and instruct the witness not to answer and let the question be certified.

Mr. Anderson: Fine.

(Whereupon Q. 148. was certified to the court for ruling.)

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DEPOSITION OF DAVID H. BOYD.

Deposition of David H. Boyd, called by the plaintiff for examination pursuant to the Federal Rules of Civil Procedure, taken in stenotype by L. Dale Fadden, Court Reporter, pursuant to agreement, on Tuesday, June 9, 1964 at 9:30 o'clock a.m., in the 12th Floor Conference Room, United States Steel Building, 525 William Penn Place, Pittsburgh, Pennsylvania.

Appearances:

On behalf of the Plaintiff:

Hamilton, Hopson & Hamilton,
1015 Kentucky Home Life Building,
Louisville, Kentucky, by
A. Scott Hamilton, Esq.

Woodward, Hobson & Fulton,
1803 Kentucky Home Life Building,
Louisville, Kentucky, by
Kenneth L. Anderson, Esq.

On behalf of the Defendants:

William H. Buchanan, Esq.,
Law Department,
United States Steel Corporation,
525 William Penn Place,
Pittsburgh, Pennsylvania

Middleton, Seelbach, Wolford, Willis & Cochran,
501 South 2nd Street,
Louisville, Kentucky, by
Albert F. Reutlinger, Esq.

PROCEEDINGS

Mr. Reutlinger: Note that there has been a waiver of having the witness sworn.

DAVID H. BOYD called as a witness and testified as follows:

Examination by Mr. Anderson.

Q. Mr. Boyd, I believe you have given your name to the reporter as David H. Boyd?

A. That is correct.

Q. By whom are you employed at the present time?

A. United States Steel Corporation.

Q. And from what office do you work at the present time?

A. 525 William Penn Place, Pittsburgh.

Q. What position or job title do you hold at this time?

A. Manager, Production Supplies, Purchasing.

Q. Is this position which you now hold connected with a particular division of United States Steel?

A. This is a United States Steel Corporation position, not a particular division.

Q. Are you connected then with purchasing of all types of items for United States Steel?

A. Production supplies are identified as maintenance repair

and operating supplies. This is the category.

Q. I see. How long have you held this particular position?

A. Since January 1, 1964.

Q. What position did you have with United States Steel Corporation prior to January 1, 1964?

A. Assistant to the Vice President of Purchasing, U. S. Steel.

Q. What duties were involved in that position?

A. Primarily the coordination of purchasing activities, with those of other departments of United States Steel Corporation.

Q. For how long did you hold that position?

A. One year.

Q. What position did you hold then prior to January 1, 1963?

A. President of United States Steel Homes Division.

Q. Now, for further purposes of this deposition and to shorten things a little bit, can we now call United States Steel Homes Division the Homes Division? I believe that is the general terminology that is used.

A. It is satisfactory as far as I am concerned.

Q. All right, sir. How long were you president of the Homes Division?

A. Five years.

Q. That would have been 1958?

A. 1958 through 1962, approximately.

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Q. Were your headquarters in New Albany, Indiana, when you were the President of Homes Division?

A. For part of that period of time.

Q. For what portion of the period?

A. From June, 1961, through the balance of my term of office there which was the end of 1962.

Q. And what was your headquarters or locale prior to June, 1961?

A. Pittsburgh. Do you want a specific address?

Q. No, that is all right.

A. Pittsburgh.

Q. During the period 1958 through June, 1961, approximately how much time did you spend in New Albany?

A. Oh, I would have a difficult time recalling because

there were a number of visits, but I would hesitate to give you a precise time or even a—

Q. Well, let me ask you this: Would you go to New Albany as much as once a week?

A. No, it was perhaps once every three to four weeks for three or four days, something on this order.

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Q. I believe during the period of time that you were at the Homes Division or the head of the Homes Division that the U. S. Steel Homes Corporation was in existence?

A. It was.

Q. Which we shall now call the Credit Corporation. That is all right with you?

A. That is sufficient for identification purposes.

Q. During the year 1959 and early part of 1960, I believe the Homes Division was attempting to gain an entry into what we call the Louisville market, is that correct?

A. I think we should say that we were trying to improve our participation in the Louisville market yes.

Q. Up to that time your sales in the Louisville market were diminutive, were they not?

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A. They were small.

Q. I believe during this particular period of time that one sales tool, which I should say for want of a better term, available to your salesmen was the putting forth to the prospective dealer of the use of the Credit Corporation as a means of financing?

A. Let us say that the salesmen were aware that U. S. Steel owned the Credit Corporation which was in business to provide financing assistance.

Q. I believe your salesmen were instructed generally

during this period of time as to the types of financing assistance available through the Credit Corporation?

A. They were.

Q. And while the salesmen would not necessarily quote specific rates of interest or specifics of that nature, they, in making their sales presentation to a prospective dealer, would outline the type of program available through the Credit Corporation?

A. In very general terms, because the salesmen had no authority or responsibility for defining the financial assistance program. This was solely the responsibility of the Credit Corporation.

Q. And I believe the Credit Corporation was a completely

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separate and independent corporate entity of its own as opposed to United States Steel or the Homes Division?

A. That is correct.

Q. The Homes Division actually was a division of United States Steel Corporation?

A. That is correct. It, itself, during this period of time, and, as far as we know, since then, has had no separate corporate entity from United States Steel Corporation?

A. Not since 1959 to date, that is correct.

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Q. Mr. Boyd, let me show you a document which is identified, as has been identified by me in examining the documents furnished to me by United States Steel through Mr. Reutlinger, as No. 55, which is a memorandum dated March 3, 1960. I will ask you to look at that and tell us whether or not you can identify it.

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A. I can identify my initials at the bottom.

Q. That was a memorandum that was sent by you to Mr. Black, was it not?

A. Right. I would have to say it was. I don't remember dictating this, but since I signed it, I am sure that it was.

Q. Did you have an opportunity to read the last paragraph of that memorandum, sir?

A. Yes.

Q. Could you state as of this particular date of March 3, 1960, that you were pretty much familiar with the Fortner situation?

A. I had been briefed by Harry Black whose responsibility it was in this kind of situation as to his desires and his feelings regarding the proposed dealership, yes.

Q. Now, the last paragraph of this memorandum goes into the question of your giving Mr. Dyas of the Credit Corporation assurances that the Homes Division would take over and operate the Fortner subdivision if Mr. Fortner could not make a go of it, is that correct?

A. That is correct.

Q. And the actual establishment of Mr. Fortner as a dealer in the United States Steel Homes actually occurred much later than this document, would that conform with your recollection?

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A. I would assume that it would be later. As to when, I do not know. I am not certain, but at this time it is probable that we discussed a proposed handling of the matter and the actual franchise was very possibly issued later, but I cannot be precise as to the time.

Q. Had Mr. Dyas on the occasion of your discussion conveyed the thought that this was such a risky venture

that the takeover of the Fortner operation was in effect inevitable?

A. No. I think that this merely portrayed some concern on Mr. Dyas' part that we might not eventually attain what we were setting out to do in this case, but this kind of thinking was not isolated to Mr. Fortner's situation.

Q. As a matter of fact, Mr. Dyas was in this conversation reflecting the concern of the Credit Corporation as a lending institution involved in this type of transaction?

A. That is correct.

Q. Now, in the processing of the establishment of dealerships and the financing that may or may not be involved, if financing is involved, was the procedure during the period 1958 through 1962 for the Homes Division to submit a request to the Credit Corporation for the Credit Corporation to enter into negotiations with the prospective dealer?

A. This was practiced, yes.

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Q. Did you also at this time discuss the possibility of Credit Corporation having to take over the Fortner enterprises subdivision?

A. No, not at that time, and again we are having trouble trying to define the time. I don't think that subject came up until after our meetings with Mr. Fortner and Mr. Hamilton.

Q. Between the time of these conversations that you have been relating in your meeting with Mr. Fortner and Mr. Hamilton, were you made aware of the fact that all of Mr. Fortner's complaints had not been rectified and the complaints continued to come in concerning the home packages?

A. Well, I suppose that I was informed that all the complaints

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had not been rectified to Mr. Fortner's satisfaction, yes.

Q. With regard to the various complaints that we have discussed, were you made aware of the considerable amount of time and additional expense required to rectify in the various homes many of the errors in the packages, over and above the actual just furnishing of a new closet door or a new sink top?

A. Well, I was aware as a member of the organization of the fact that if, indeed, a part of the product was furnished that did not properly do its job, that time and effort was required to replace it, even though we may have replaced the part or piece.

I was aware of the fact that additional time and effort was needed to replace it, certainly.

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Q. I believe you were present in Mr. Hamilton's office in June of 1962 at a meeting with representatives of the credit Corporation and Mr. Fortner and certain other persons?

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A. I was.

Q. What other representatives of the Homes Division were present at this meeting?

A. As I recall, Mr. Black, and Mr. Black and I were the representatives of the Homes Division.

Q. During that particular meeting, I believe a request was made on behalf of Mr. Fortner for them to be allowed to build in the subject subdivision conventional homes, do you recall that?

A. This could very well have been discussed at the meeting. I don't recall specifically, but I will say that it could very well have been discussed.

Q. Isn't it correct that Mr. Dyas at that meeting in response to that request stated in effect, absolutely no, that U. S. Steel homes had to be built in the subdivision in its entirety?

A. Mr. Dyas would be more competent to answer that question than I, but I would guess that Mr. Dyas might have responded essentially as you indicate, but again after a lapse of two years it is difficult to remember precise elements of the conversation.

Q. You were made aware as a result of that meeting of the continuing complaints of Mr. Fortner concerning the quality of

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the homes furnished him, were you not?

A. Mr. Fortner made us aware of this at the meeting.

Q. And you were also made aware at that meeting of the decline in acceptability of the subdivision as a result of the complaints of Mr. Fortner?

A. This is what Mr. Fortner stated at the meeting, yes.

Q. Had you ever, yourself, personally, gone to the Golden Meadow subdivision of Fortner Enterprises?

A. I had not.

Q. Now, the Homes Division was not a party to your knowledge to the loan agreements and mortgages between Credit Corporation and Fortner Enterprises?

A. It was not.

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Q. Are you aware of the fact that the loan agreement or mortgages between Fortner Enterprises and the Credit Corporation contained a provision that all the homes to be erected in the subject subdivision would have to be United States Steel Homes?

Mr. Reutlinger: I am going to let the witness answer,

but note an objection to the interrogation as to what is in a written instrument which is a matter of record. The instrument will speak for itself as to its provisions.

I think the question should be further qualified that that provision which you mentioned remains in existence only while the loan is outstanding.

You go ahead and answer the question.

The Witness: I can only say that I did not see the instrument, the loan agreement and/or mortgage involved. As to the fact that such an instrument contains the provision that you mention, I can say that it is likely that it did.

By Mr. Anderson:

Q. Did you participate in the decision which resulted in this type of clause being placed in the loan agreements and/or mortgages as set up by the Credit Corporation?

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A. No, I did not.

Q. To your knowledge had this type of provision been in these documents prior to your assumption of the presidency of the Homes Division?

A. As far as I know, yes.

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Q. Mr. Boyd, I show you a document entitled "Underwriting Agreement" dated March 30, 1962, which has been identified as Document No. 237, obtained from United States Steel.

Are you familiar with that underwriting agreement?

A. Yes. I was signatory to this agreement.

Q. Would you give us the background of this particular agreement?

A. Well, I can only say that it was determined after a review of the way in which we did our business and the basis on which we recommended loans to the Credit Corpo-

ration that U. S. Steel Homes in its commercial judgment, if it wished to recommend a loan be made to a builder-dealer, and subsequently the Credit Corporation determined that the financial aspects of such a loan indicated a relatively high risk because of the extent of capital which the Credit Corporation provided to the

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builder, we in turn were asked to underwrite the amount of such loans in order to protect the corporation against losses which it might incur if the builder-dealer failed to have the success in his enterprise that we commercially thought he might obtain.

Q. I believe Fortner Enterprise loans or a portion of them are the subject of that agreement?

A. Yes, Fortner Enterprise loans were.

Q. In other words, this situation was one in which the Homes Division could continue to use the Credit Corporation as one of its sales means of obtaining busienss and yet, at the same time protect the Credit Corporation in certain instances?

A. It was to protect the Credit Corporation in what we might describe as—or what the Credit Corporation described as relatively high risk loans, yes.

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Q. Using your terminology, in terms of direct costs, could

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you give us an area of mark up above the direct costs?

A. Well, I can give you what might be called an approximation, that we strove to meet the competitive levels, and our mark up over our direct cost in an attempt to meet competitive prices would average perhaps somewhere in the neighborhood of 20, 22 per cent, direct costs.

Deposition of David H. Boyd

Q. During the five years that you were at the Homes Division, were your prices ever at a level below cost?

A. No. Below direct cost, no.

Q. Were they ever set at a level below total cost, to your knowledge?

A. I can't be really precise on this. I really would have to defer answering, because I can't be real precise. We are in an area that is so subject to precise measurement that I just can't.

Q. Did the Homes Division have a separate divisional profit and loss statement for the period you were there?

A. Our accounting department rendered for consolidated accounting purposes, a separate profit and loss statement on our activities.

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DEPOSITIONS OF THE DEFENDANTS, BY MR. WILLIAM H. LANG, MR. BENJAMIN L. RAWLINS AND MR. RICHARD C. DYAS.

Depositions of the Defendants, by Mr. William H. Lang, Mr. Benjamin L. Rawlins and Mr. Richard C. Dyas, pursuant to order and notice, held at the offices of United States Steel Corporation, 71 Broadway, New York, New York, on April 21, 1964, at 10:25 o'clock a.m., before a Notary Public of the State of New York.

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Appearances:

Hamilton, Hopson & Hamilton, Esqs.
Attorneys for Plaintiff
1015 Kentucky Home Life Building
Louisville, Kentucky 40202

By: A. Scott Hamilton, Esq.,
of Counsel.

Deposition of the Defendants, Etc.

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By: Kenneth L. Anderson, Esq.,
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501 South Second Street
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By: Albert F. Reutlinger, Esq.,
of Counsel.

William C. Buchanan, Esq.
Law Department
United States Steel Corporation
525 William Penn Place
Pittsburgh 30, Pennsylvania.

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PROCEEDINGS

Mr. Anderson: Prior to the interrogation of the witness, I would like to state for the record that this deposition and the ensuing depositions of Mr. Richard C. Dyas and Mr. Benjamin L. Rawlins are being taken by agreement of the parties on this date, and during such days as follow as will be necessary to complete the taking of the depositions; and further, that certain documents during the course of the depositions will be produced and identified in accordance with an agreed order signed by Mr. Reutlinger, counsel for the defendants, and by myself, as counsel for the plaintiff in this action.

It is further agreed between counsel that the reading and signing of these depositions by the respective witnesses is waived.

Deposition of William H. Lang

WILLIAM H. LANG, having been duly sworn by the Notary Public of the State of New York, was examined and testified as follows:

Examination by Mr. Anderson.

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Q. Mr. Lang, would you give us your full name, please?

A. William H. Lang.

Q. And what is your home address, sir?

A. Number 10 Delbarton Drive, Short Hills, New Jersey.

Q. You are employed by the U. S. Steel Homes Credit Corporation, I believe?

A. I am employed by United States Steel Corporation.

Q. Are you also employed by a corporation entitled U. S. Steel Homes Credit Corporation?

A. I serve as president of the U. S. Steel Homes Credit Corporation.

Q. So that you hold positions with two separate corporations; is that correct?

A. That's correct.

Q. What is your position with United States Steel Corporation?

A. Vice-president and treasurer.

Q. And I believe that you stated you were president and treasurer of the U. S. Steel Homes Credit Corporation?

A. President. I used to be treasurer of it.

Q. You are not treasurer at the present time?

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A. We changed that around. At the time of this event, I was president and treasurer.

Q. In other words, as of June, July and August of 1962, you were president and treasurer?

A. Yes, sir.

Q. Where are your offices located?

A. We have a headquarters office here, we have a branch office at New Albany.

Q. Your headquarters offices, then, are located at 71 Broadway, New York, New York?

A. That's right.

Q. And the branch office to which you referred is the office in New Albany, Indiana?

A. That's right.

Q. Where are you, yourself, presently located, Mr. Lang?

A. 71 Broadway.

Q. Can you tell us approximately when the U. S. Steel Homes Credit Corporation was formed?

A. About 1954.

Q. Were you involved in the formation of that corporation?

A. Yes.

Q. What was your position with United States

Steel Corporation at that time?

A. Assistant treasurer.

Q. How long had you held that position?

A. Two years, close to two years.

Q. How long have you been with United States Steel Corporation altogether?

A. As of now?

Q. As of this time.

A. Thirty years.

Q. What office did you first have with the U. S. Steel Homes Credit Corporation?

A. File clerk.

Q. The U. S. Steel Homes Credit Corporation.

A. President and treasurer.

Q. So that you held that position for some eight or nine years, both president and treasurer?

A. That's right.

Q. As such, are you the chief executive officer, for—let us shorten our terminology here—the Credit Corporation?

A. Yes.

Q. To the best of your knowledge—and of course, the purposes will be set forth in detail in the articles of incorporation of the Credit Corporation—

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but to the best of your understanding, would you state briefly the original purpose for the formation of the Credit Corporation?

Mr. Reutlinger: One of the records that you asked to be produced is a memo that you presented to your Steel Corporation's board of directors, is that correct, Mr. Lang? Or am I incorrect in that assumption?

The Witness: At the time consideration was given to the formation of an organization, the men who made the decision in the Steel Corporation—the members of the finance committee—considered this memorandum as pertinent to that decision.

Q. Would you identify that memorandum, please?

Mr. Reutlinger. By title or date, or perhaps both, Mr. Lang.

A. It's a program for financing construction, and sales by dealer-builders of U. S. Steel Homes, Inc. And the purpose, as outlined here, was to meet the competitive demand.

It was proposed that we provide through the facilities of a financing agency construction and mortgage financing for dealer-builders who would represent

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U. S. Steel Homes Credit Corporation.

Mr. Reutlinger: Do you want copies of that made and put into the record?

Mr. Anderson: I don't think it necessary that this document be made a part of the deposition, because I am going to ask for a copy of this document.

Mr. Reutlinger: All right.

Mr. Anderson: Just so that we have it sufficiently identified in the record.

Q. I believe you gave the title of this document, Mr. Lang.

Mr. Reutlinger: He did.

Q. Would you also give us the date of the document? I believe it appears at the bottom of the second page.

A. January 12, 1954 (reading).

Q. By whom was this document prepared?

A. I don't recollect.

Q. Was it presented to the finance committee of the United States Steel Corporation?

A. Yes, that is my recollection.

Q. As of January 12, 1954, I believe within a comparatively short time in relation to that date,

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United States Steel Corporation had acquired a manufacturer of prefabricated homes located in New Albany, Indiana; is that correct, sir?

A. Well, the date of that is a matter of record. I don't have it at my fingertips.

Mr. Reutlinger: If you don't know, that is the answer. I don't know either, Mr. Anderson.

Mr. Anderson: I am not trying to get an exact date here. I am trying to find out whether this other manufacturer was acquired ten years prior to 1954, or five years, or two years, or six months, or just the general relationship.

Mr. Buchanan: I can get that date for you.

Mr. Anderson: Then you will furnish us with that date?

Mr. Buchanan: Yes.

Q. As of January, 1954, in the course of your duties with the United States Steel Corporation, did you have any connection with the division of United States Steel Corporation which handled the manufacture and sale of prefabricated homes?

A. The Credit Corporation was designed, and has functioned, at the instigation of, or the invitation of, the Homes Division.

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So that when a dealer was not able to finance through so-called local or normal channels, the Homes Division called in the Credit Corporation to see if we could assist their dealer, at their dealer's request, in meeting any of his financing problems.

Q. Prior to the formation of the Credit Corporation, did you have any connection, or were you involved, during the course of your duties, in the division of United States Steel Corporation that manufactured and sold the prefabricated homes?

A. None.

Q. None?

A. No.

Q. I assume, then, that you were just more or less aware of the existence of the Homes Division, but then had no particular contact or concern with it prior to the formation of the Credit Corporation?

A. That's right.

Q. I believe the Credit Corporation was established in 1954 as a completely separate corporate entity?

A. Right.

Q. I believe it is a Delaware corporation; is that correct?

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Mr. Reutlinger: Whatever those interrogatories show; that is my impression.

The Witness: You have the books over there. It is a Delaware corporation.

Mr. Buchanan: That's right.

Q. Since the formation and the beginning of the operations of the Credit Corporation, I believe you have made substantial loans in about eleven states; would that be correct, sir?

A. We have made loans of varying amounts in a large number of states where we qualify to do business, and they varied according to any particular dealer's requirements at any particular year.

Q. In how many states are you qualified to do business?

A. I would have to recheck that record, because we have qualified and gone out, depending upon needs at a particular time.

Mr. Reutlinger: We can furnish you with that information. You want to know how many states they are qualified to do business in today?

Mr. Anderson: No, during the period of 1963 and 1962.

Mr. Reutlinger: Both years inclusive?

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Mr. Anderson: Yes.

Mr. Reutlinger: And that is the Credit corporation?

Mr. Anderson: That's correct.

Mr. Reutlinger: Let me interrupt to ask how you want us to handle the furnishing of this information.

Do you want me to send the reporter a letter to incorporate in the deposition, or do you want it sent direct to you without further recourse to the reporting service?

Mr. Anderson: I would prefer that it come directly to us; otherwise, it will simply delay the preparation of the deposition.

Q. Mr. Lang, in any of the states in which the Credit Corporation is qualified to do business, or was qualified to

do business during the period 1960 through 1962, has it been necessary for the Credit Corporation to register as a banking institution?

Mr. Reutliner: I think for the sake of the record, I should make an objection, as this calls for a legal conclusion from the witness as to whether such was or was not necessary.

I think he can tell you whether they have

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done such or not which is a fact.

Mr. Anderson: Well, that was the intent of my question, to find out whether they had done so.

Mr. Reutlinger: Ask him the fact, not the opinion.

If you have qualified as a banking institution in any state, tell Mr. Anderson. If you haven't, or if you don't know, that is your answer.

A. The word "banking" is a very confusing word. We registered to do business in various states from time to time, consistent with the initial charter of the corporation, which authorized us to do certain things pertaining to the building, the financing and mortgaging of homes.

Mr. Reutlinger: Let's assume that there are ten states involved, for the sake of discussion. The banking laws of ten states are different.

Mr. Hamilton: Do you mind if I just ask questions instead of going through Mr. Anderson?

If in fact you have qualified as a bank in any state in the union, would you furnish that

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information to us?

Mr. Reutlinger: Yes.

The Witness: We have not qualified as a bank, in terms of the common usage of the word bank, any place.

Q. Have you qualified as a lending institution, if you

are making a distinction between bank and lending institution?

A. Our qualification in these various states, depending upon the state involved, was related just as I have explained it, to the making of loans, the ability to finance dealer-builders of U. S. Steel Homes. That did involve lending on occasions.

Q. Has any agency of the Federal government actually exercised, to your knowledge, any regulation or control over your activities in connection with the lending of money?

A. We are known as an F.H.A. mortgagee, and to that extent comply with the regulations of F.H.A.

Q. Other than the F.H.A. has any institution or agency of the Federal government, which controls lending or banking institutions, exercised at any time, let's say in the last five years, any regulatory controls?

A. Not to my knowledge, no.

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Q. Mr. Lang, when the Homes Division has a customer interested in obtaining financing, what procedure is followed as between the Homes Division of United States Steel Corporation and the Credit Corporation in obtaining activity by the Credit Corporation with respect to the financing?

Mr. Reutlinger: I presume your question is generally, and not in this specific case?

Mr. Anderson: Not in this specific case; I am just asking for general procedure.

A. Once the Homes Division makes its determination that this is a desirable dealer, and franchises, or intends to franchise that dealer, based on whatever their criteria are, and if that dealer is not able to arrange financing, or doesn't possess financing himself, then the Homes Division will ask us, the Credit Corporation, if we'll see what we can do to aid this customer's financing problem.

Q. What procedure is then followed? Do you have someone from the Credit Corporation contact the customer?

A. That's right.

Q. And then I take it negotiations are entered into with the customer concerning his financing needs

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A. Well, first, before you negotiate, you have to understand what they are and what the needs are. And whether you can do them or not do them, depends on many, many things, and they are different on each occasion, different factors.

Q. You obtain your background information first, and evaluate it, and then enter into negotiations; would that be a fair statement?

A. Yes.

Mr. Buchanan: Could I interrupt here and make sure that Mr. Lang knows what you mean by "enter into negotiations?" I am not sure that I know what you mean by it.

Mr. Anderson: I think he understood the question. If he didn't, he could have asked me. You are not testifying, Mr. Buchanan. Mr. Lang is.

Mr. Reutlinger: He is asking for his own information.

Mr. Buchanan: I am just trying to clarify it.

The Witness: Will you please define what you mean by negotiations?

Q. Negotiations in the context in which I used the word, involve the give and take with a particular

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customer concerning his needs and the Credit Corporation's willingness to make a counter-proposition, or work out some arrangements with the potential customer.

A. Yes.

Q. I assume that is approximately what you understood the word to mean in this context; is that correct?

A. Yes. Negotiations are the analysis of the problem

and the ability to find a solution which is mutually satisfactory, if that's possible.

Q. Is it not correct that at least during the years 1960 through 1963, approximately 70% of the sales by the Homes Division of United States Steel Corporation have been financed by the Credit Corporation?

A. To give you a correct answer, I'd have to recheck the figures for that period.

Q. Would you then furnish us with the percentage in terms of dollar volume, of sales by the Homes Division which have been financed by the Credit Corporation?

A. Yes.

Mr. Reutlinger: To clarify that, you mean transactions consummated within that three-year

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period?

Mr. Anderson: Four-year period, 1960 through 1963.

Mr. Reutlinger: I thought you said 1962.

Mr. Anderson: No, 1963.

Mr. Reutlinger: That is what you mean, transactions consummated within that four-year period?

Mr. Anderson: Yes.

Please note for the record that counsel for the defendant has agreed to furnish the information requested of Mr. Lang.

Q. Mr. Lang, could you tell us at this time why a separate corporate entity in the form of the Credit Corporation was created in 1954 for the purposes which you have outlined?

A. Others in the prefabricated business at that time had formed financing affiliates of one form or another, and it appeared that looking into a more competitive market, having had the housing demand reasonably filled up, after the post-war period, that those in the business as a means of servicing dealers should supply this additional service.

Q. Did you also desire to avail yourself of the immunity which a separate corporate entity would

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give, as far as limitation of liability is concerned?

A. I'd have to give a yes or no answer. Immunity had nothing to do with it; immunity from responsibility had nothing to do with that decision.

But by the same token, in looking around in other fields, and in this field, it was apparent that in most cases, financing affiliates were separate organizations, and so set up by the parent or related company.

Q. The original capital with which the Credit Corporation was established, I believe, was furnished in its entirety by the United States Steel Corporation; is that correct?

A. It's a wholly-owned subsidiary of United States Steel Corporation.

Q. And has United States Steel Corporation since that time continued to put additional funds in capital into the Credit Corporation, as needed?

Mr. Reutlinger: If you know.

A. The original capital stands as it was. It has borrowed additional funds from time to time, either from outside or inside sources.

Mr. Reutlinger: By "outside sources," you mean sources other than United States Steel

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Corporation, commercial banks?

The Witness: Commercial banks, yes.

Q. Let me see if I understand this correctly, then.

Outside of the initial capitalization by United States Steel Corporation—

Mr. Reutlinger: You mean initially, don't you?

Mr. Anderson: I said initially.

Q. —the funds which the Credit Corporation have ob-

tained since that time have been obtained either from loans from United States Steel Corporation, or through loans from organizations not directly related to, or affiliated with, United States Stel Corporation?

A. Namely banks, yes.

Q. What is the approximate ratio of funds obtained through borrowing from banks, as related to funds obtained from United States Steel Corporation?

A. Over a period of time, it has varied all the way from six dollars of outside borrowing to one dollar of capital, and/or debt, to eight or nine times outside borrowing compared to capital or intercorporate debt.

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Q. The Credit Corporation, if I understand your previous testimony correctly, has been used since its formation as a tool to enable the Homes Division to sell prefabricated homes to its customers; would that be correct?

Mr. Buchanan: I would like to object to that characterization.

Mr. Anderson: Please note for the record that while we have not objected to Mr. Buchanan being present in the room during the taking of the deposition, Mr. Buchanan is not counsel of record, and has no standing to make any objections in this room.

Mr. Reutlinger: Well, I object then. I guess the word "tool" is poorly placed. I think you have already answered the question, Mr. Lang, unless the Credit Corporation has deviated from the purpose given in this memorandum.

Have they deviated from that purpose?

The Witness: Never.

Mr. Reutlinger: Then your answer would be—I don't know whether it's in the record or not—

Mr. Anderson: I object to Mr. Reutlinger answering the question for the witness.

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If Mr. Reutlinger wants to instruct the witness not to answer the question, I can certify it. But I think it is a question which Mr. Lang can answer.

A. I would answer your question by saying that I have already told you the purpose and function of the Credit Corporation, and that is what it has done in its years since 1954.

Mr. Anderson: Would the reporter please read back the question that I originally asked? (The reporter read the pending question: "The Credit Corporation, if I understand your previous testimony correctly, has been used since its formation as a tool to enable the Homes Division to sell prefabricated homes to its customers; would that be correct?")

Q. That question calls for a simple yes or no answer, and I would like for you to answer the question in that manner, Mr. Lang.

Mr. Reutlinger: I think I have a privilege and a duty to instruct the witness that even if he gives a yes or no answer, he is entitled to give an explanation of same.

You understand that, don't you, Mr. Lang?

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The Witness: Yes.

Mr. Reutlinger: Answer the question, if you can.

A. I would say the Credit Corporation has consistently—

Q. Would you first answer the question yes or no, and then, as Mr. Reutlinger says, you are perfectly free to make any explanation you would like to, sir.

Mr. Reutlinger: I don't think he is compelled to answer yes or no to it. I think he is compelled to make some sort of response. Maybe it's a question that can't be answered yes or no, with the use of the word "tool" in it.

I think he can just do his best.

Mr. Anderson: Again, note my objection to Mr. Reutlinger coaching the witness in the form of a statement, which is not in the form of an apparent objection.

I still request that the witness answer the question.

Mr. Reutlinger: Answer it, if you can.

A. My response to your question is simply this: It has to do with the word "tool."

The Credit Corporation, faithful to its original premises, has consistently, at the request of the Homes

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Division, aided its sales program thruogh aid given to dealers.

So therefore, when you say has the Credit Corporation been used to help the sales of the Homes Division, the answer is yes, it has been used to help the sales of the Homes Division.

Is that a response?

Q. Again, asking the question in terms of generalities: Are there, and have there been, instances in which the Credit Corporation has made loans at the insistence of the Homes Division in which the Credit Corporation has not considered the loans to be a good financial risk when regular banking and financing principles are applied to them?

The Witness: May I have the question read back, please?

(The reporter read back the pending question).

A. Yes.

Q. Have all the loans made by the Credit Corporation been in that category? Or have some of them not been, and have some of them been in that category?

A. Most of the loans have been made on the basis of sound and reasonable financial practices.

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Q. But some have not?

A. Well, I say most of the loans have been made on the basis of sound and reasonable financing practice.

Q. And conversely, some have not been?

A. And there have been some where for one reason or another the Homes Division encouraged, or wanted, a piece of business. And those loans occasionally, infrequently, have been approved, or processed—not approved, processed.

Q. An underwriting agreement was entered into between the Homes Division and the Credit Corporation in March of 1962. Are you familiar with that agreement?

A. I am familiar with the idea and concept of it, yes.

Q. Were the loans identified in the attachment to that agreement, those loans which were considered by the Credit Corporation to have at one time or another been a doubtful financial risk?

A. I'd have to refresh my memory before I could answer that question. It's too long ago.

Mr. Reutlinger: There is a list appended to that, Mr. Lang (handing document).

A. (Cont.) May I have the question again, please?

(The reporter read back the question).

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A. (Cont.) At one time or another, the loans which are recorded here, or the companies which are recorded here, were considered to be doubtful or marginal risk. The condition of any one company changes from time to time.

Mr. Reutlinger: For the sake of the record, can we identify that as a list appended to the underwriting agreement, dated March 30, 1962, between the Credit Corporation and the Homes Division, United States Steel Corporation.

Q. Have you loans ever ben made by the Credit Corporation to any organizations other than organizations which would be identified as customers of Homes Division?

A. Not to my knowledge, no.

Q. Have there been years since the formation of the Credit Corporation in which the Credit Corporation has made a profit?

A. Yes.

Q. Has the Credit Corporation made a consistent profit throughout the years?

A. It has made a consistent profit from an operating viewpoint. If one considers the mortgage aspects of it, there have been periods when losses were incurred through the sale of mortgages.

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Mr. Anderson: Let me see if I can obtain for our information, then, more specific data.

Would you furnish to us the amount of profit made by the Credit Corporation during each year since its foundation in 1954 through 1963?

Mr. Reutlinger: From its formation to 1963?

Mr. Anderson: Yes.

Mr. Reutlinger: What you want is an annual statement of Credit Corporation for those years?

Mr. Anderson: That will be fine, yes.

Mr. Reutlinger: A. P. & L.

Mr. Anderson: Yes.

Mr. Reutlinger: Are you on a fiscal year, Mr. Lang?

The Witness: Yes.

Mr. Anderson: What is the fiscal year?

The Witness: We're on a calendar year, December 31st.

Mr. Reutlinger: The calendar year is the fiscal year.

Q. For my own general information at this time, Mr. Lang, has the Credit Corporation made an

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over-all profit during each of its operating years?

A. I tried to answer that question by saying on an op-

erating basis, in the making of loans, it has made money consistently.

From the sale of mortgages, which it took for one purpose or another, or reason, because the mortgages had no other home—they weren't committed for—the resale of those mortgages sometimes incurred a loss.

Q. Could you explain to us how that affected the overall financial statement?

A. Generally, the Credit Corporation has made money.

Q. So that they have come out with a net profit on their financial statement?

A. That's right.

Q. How acquainted are you with the matter which is the subject of this litigation, namely, the various loans to Fortner Enterprises, Inc.?

A. Only by reference to me by Mr. Dyas, and by discussions—excuse me, change that word discussions—by correspondence addressed to me by the Homes Division.

Q. I take it, then, that you did not have any personal contact with any representatives of Fortner Enterprises, Inc. from 1959 through approximately August of 1962?

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A. I don't recall any. The only time it could have happened is at a—if I were in Louisville sometime, and Mr. Fortner happened to be there, or one of his associates. I may have been introduced to him. I don't recollect that.

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Q. Mr. Lang, in connection with the operation of the Homes Division of United States Steel Corporation, have you participated in the period since the formation of the Credit Corporation in decisions involving the type of product to be manufactured and sold by the Homes Division?

A. No.

Q. Have you participated in any decisions involving the market area in which the Homes Division would sell prefabricated homes and their component parts?

A. As part of the United States Steel Corporation, as well as having responsibility for aiding through the Credit Corporation, there have been occasions when, to

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better plan our work, we have inquired or discussed, "Where is the market of the Homes Division?"

That is solely to obtain information so that we could be prepared to better serve them.

Q. Have you participated in any decisions as an officer of Credit Corporation concerning the prices to be changed for prefabricated homes and/or their component parts since the inception of Credt Corporation down to the present date?

A. Never.

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Q. Have all loan agreements in which Credit Corporation has entered into, from the period 1958 through 1962, contained in them, number one, a description of the property which is to be the collateral security for the loan?

The Witness: Would you read that question, please?

(The reporter read back the pending question).

A. It's my belief that they have contained a reference or description of such property.

Q. Number two, has each such loan agreement contained as a condition thereof a requirement that the

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borrower erect on the described premises homes manufactured and sold by Homes Division of United States Steel Corporation?

A. I can't recollect the full details of all those loan

agreements. That information is available, but I can't recollect it here.

Mr. Reutlinger: I suggest to counsel he already has the information in response to interrogatory 17.

Mr. Anderson: I have an answer to interrogatory 17, yes.

Mr. Reutlinger: By this corporation.

Mr. Anderson: I am still entitled to ask the witness this question.

Mr. Reutlinger: I didn't say you weren't. I think he said he didn't know, without coaching.

Q. In or out of the loan agreements, can you recall any instance in which the Credit Corporation has entered into a loan agreement, in which said loan agreement has not provided as a condition of the loan agreement that homes manufactured by the Homes Division of United States Steel Corporation be erected on the property described in that loan agreement?

The Witness: May I have that question

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again, please?

(The reporter read back the pending question).

A. I can't honestly answer that unless I go all over the agreements.

Q. I believe you are aware of the fact that there was a condition in the loan agreement entered into between Fortner Enterprises, Inc. and the Credit Corporation requiring Fortner Enterprises to erect on the entire subdivision which was the subject of that loan agreement, homes manufactured by the Homes Division of United States Steel Corporation?

A. My Dyas has indicated, and my recollection of the case is, that Mr. Fortner was going to use United States Steel Homes products in connection with this loan and his franchise with the Homes Corporation.

Q. Your company has stated, in response to interrogatory 17 previously propounded by us on behalf of the plaintiff to your corporation, that all loan agreements entered into by the Credit Corporation contain such a requirement, that is, the erection of homes manufactured by the Homes Division.

A. Is that within a specific period?

Mr. Reutlinger: I think, rather than tell the witness what the interrogatory was, why not

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let him read the interrogatory and the answer?

(Document is handed to witness).

Mr. Anderson: All right.

Q. My question is this, sir: Who made the decision to insert in said loan agreement the condition which I have previously described?

A. That condition being?

Q. That each home to be erected in the subdivision described in the loan agreement must be purchased from the Homes Division of United States Steel Corporation.

A. The decision to get into a financing operation to aid the Homes Division contemplated that loans would be made where it served to supplement—augment—the sales of the Homes Division. So that, as long as a loan was outstanding, we expected that the U. S. Steel Homes products would be used.

Otherwise, there was no reason for the loan, because we're not in a financing business, per se.

Q. My question, sir, was what person, or group of persons, made the decision to place that particular condition in the loan agreement as tendered to Fortner Enterprises, Inc.?

A. I am saying that that decision is inherent in

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the very nature of the Credit Corporation. And that who-

ever made that decision merely implemented the general policy of the purpose for being, the reason for being in existence.

Q. Then that decision was a joint decision made by the Homes Division executives and the responsible executives of the Credit Corporation?

A. No.

Q. Was it a decision made by yourself, or Mr. Dyas, or both of you, as the chief executive of the Credit Corporation?

A. Yes.

Q. Without consultation with the Homes Division?

A. Well, the Homes Division knows, from the very nature of what we went over before, that the Credit Corporation is not in the general lending business, and that every loan it makes is designed to aid in the distribution of their product.

So that they expect that every loan that we make is going to involve a sale of their product.

Q. And this is, then, a general understanding between Homes Division and the Credit Corporation which has existed from the formation of the Credit Corporation?

A. This is a general dictate by the people who orgar-ized the Credit Corporation; that is its reason for being.

Q. I believe the loans which were made to Fortner Enterprises, Inc., by the Credit Corporation were made to enable the Homes Division to obtain an entry into the Louisville and Jefferson County, Kentucky market; would that be correct?

A. The Homes Division had indicated that Fortner appeared to them as an interesting way in which they could have broader distribution in that local market.

Q. And negotiations were instituted and consummated

by the Credit Corporation to aid the Homes Division in expanding its entry into that market; is that not correct?

A. Yes.

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Q. It was your intention, so long as this agreement was in effect, to require Fortner Enterprises to erect on each lot a home manufactured by Homes Division of United States Steel Corporation?

A. Which Mr. Fortner agreed to on a voluntary basis.

Q. Would you just answer the question, please?

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A. Yes.

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Q. Mr. Lang, I show you document which I have marked C-13, and ask you if you would look at that document and tell us whether or not it is in your handwriting, first of all (handing).

A. Yes, that's my writing.

Mr. Reutlinger: Does it have a date on it, so I can identify it further?

Mr. Anderson: I was going to ask him about that.

Q. This does have a date of apparently June 16th on it.

A. Right.

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Q. Do you recall in what year this document was written?

A. No, I don't.

Q. I have difficulty in reading some portions of this, as far as the handwriting is concerned. Would you just read the entire document into the record, please?

A. (Reading) "1. A loan which is made should be adequate to do the job." "Is made" being underlined.

"2. A customer deserves our best cooperation. If he is to be a productive account and has a problem, how can we help solve it?

"3. We avoid working capital loans as such, (A), because a customer must have something at risk; (B) we are not in the business of just lending money. It must be associated directly with the production of houses.

"4. People's lack of comprehension of two programs and discussion about words are aggravating, but can't be a reason for action or inaction. If it is put up the wrong way, get it right, but our customer should not suffer."

Q. And that has your initials at the bottom?

A. Yes, sir.

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Q. And it is addressed to "R.C.D.?"

A. Yes.

Q. And that would be Mr. Dyas?

A. Yes.

Q. I show you document which is marked C-16 and ask you again if that is your handwriting on that document (handing).

A. It appears to be.

Q. This document has, apparently, a date at the bottom of July 6th. Would you read that document and then tell us whether or not you can recall in what year that particular document was written?

A. I can't recall.

It is addressed to "R.C.D."

"If we all create and understand sound principles, we are seldom in this situation—this is not new, but a part of any group wanting to make a joint accomplishment. Such understandings must come from close working together and not through formal exchanges.

"I don't like the type of loan, the dealer's attitude, and so forth and so forth, but I also don't like the time it has

taken, the back and forth inter-company conversations, and all that, a dismissal of the case, when Homes and Credit are miles apart from any

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common understanding. How can this be explained?"

Q. Mr. Lang, I show you two documents which are marked C-19 and C-20, which again are copies of documents provided by the Credit Corporation for my inspection and copying.

I show you first the document marked C-19 and ask you if you would identify that for us, please; first of all, the typewritten portion of that document (handing).

A. Well, it's a memorandum addressed to me under date of May 11, 1962.

Q. From whom did it come?

A. I don't know, I have no idea.

Q. The "R.C. Dyas" at the bottom of the typewritten portion of that document—

A. That may be Dick's memo, I don't recall.

Q. At the bottom of that document, is some handwritten language again.

Is that your handwriting?

A. Yes, it appears to be.

Q. Would you read all of that handwritten portion for the record, please?

A. "Boyd—discussed today. Tends to bird writing response. R.C.D. will try to see if can't

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help on oral basis instead of allowing written points to become issues."

Q. Is the word help that you read there, "help" or "keep"? Can you tell?

A. I guess it is keep. "If can't keep on oral basis instead of allowing written—" I'm not sure what that is. I think it's keep.

Q. That note, then, was written by you?

A. Yes, that is my handwriting.

Q. And the person to whom it was addressed, that would be Mr. Boyd, who at that time was—

A. No, it was not addressed to Mr. Boyd.

Q. Would you explain the use of the word Boyd?

A. Well, it looks like I received this, with whatever the attachment was. And apparently, Mr. Boyd called and I recorded this as a summary, or something, of a conversation.

What does the letter say? Is that important?

Q. You are free to read the letter, if you wish.

(Witness reads letter).

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Q. For what business purpose, or for what purpose generally, was the underwriting agreement of March 30, 1962, entered into, to which we have previously referred?

A. There were various factors involved in this. The principal reason, as in any business, where you do

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something for reasons beyond financing considerations, there are different ways of assessing responsibility.

And if, financially, a loan could not be supported on financial consideration, and the Homes deemed it desirable to proceed with that loan, or whatever their considerations were, then this type of instruments permitted the assessment of loss or damage, if there were one, to go back to the people who were principally benefitting from that decision.

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Deposition of Benjamin L. Rawlins

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April 21, 1964
2:40 o'clock p.m.

BENJAMIN L. RAWLINS, having been duly sworn by the Notary Public, was examined and testified as follows:

Examination by Mr. Anderson

Q. Mr. Rawlins, would you give us your full name, please?

A. Benjamin L. Rawlins.

Q. What is your home address, sir?

A. 142 East 38th Street, New York, New York.

Q. By whom are you employed, and what is your position?

A. I am employed by United States Steel Corporation, and I am secretary and assistant general counsel.

Q. Are you also employed by U. S. Steel Homes Credit Corporation?

A. I am secretary of U. S. Steel Homes Credit Corporation.

Q. As secretary of these two corporations, do you regularly keep in your custody and control the minute books of the two corporations?

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A. I do.

Q. Have you, in accordance with the agreed order entered in this case, produced the entire minute books of U. S. Steel Homes Credit Corporation?

A. I have.

Q. Have you also produced, again in accordance with the agreed order, those portions of the minutes of United States Steel Corporation which pertain to the formation and operation of U. S. Steel Homes Credit Corporation?

A. I have produced copies of the minutes, including, in one or two cases, representative minutes, typed, that are regularly more or less entered monthly in the minutes of the Finance Committee of the United States Steel Corporation.

Mr. Anderson: First addressing ourselves to the minutes of U. S. Steel Homes Credit Corporation, I would like to request counsel to stipulate that we, as counsel for the plaintiff, may read through the minute books of U. S. Steel Homes Credit Corporation which have been produced, and to allow us to designate certain portions, if any, of those minutes for reproduction and furnishing to us, rather than attempting at this time

to consume the time of the witness and all counsel involved in going through these minute books on the record.

Off the record, please.

(Discussion off the record).

Mr. Anderson: Let the record note that it has been stipulated between counsel for the parties that I will examine the minute books of U. S. Steel Homes Credit Corporation, either today or tomorrow, and indicate those portions of the minute books, if any, which I desire to have reproduced; and that the U. S. Steel Homes Credit Corporation will furnish us with copies of those portions which we identify.

The Witness: May I state that it is possible that we have copies of some of the minutes, as we had in connection with the U. S. Steel minutes, and I will furnish those instead of photostating, or reproducing, these pages.

Mr. Anderson: As long as they are true copies, that will be satisfactory.

Q. Mr. Rawlins, in connection with the portions of the minutes furnished by United States Steel

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Corporation, may I see those?

A. Yes, sir (handing).

For the record, I might indicate that in connection with the finance commitments, the Finance Committee, prior to, I believe, May of 1956 was in effect the executive committee of United States Steel, of the Board.

And in 1956, the by-laws were changed, and an Executive Committee, as such, was formed. And after that date, the Finance Committee was a smaller committee which did not act as an executive committee, but acted particularly in connection with financial matters, financial policy and so forth.

Q. May I ask if the Executive Committee meeting minutes are regularly made a part of the minutes of the United States Steel Corporation, Mr. Rawlins?

A. Sir, would you repeat your question?

Q. Are the Executive Committee minutes regularly made a part of the minutes of the United States Steel Corporation in its official minute book?

A. Yes, both the Executive Committee minutes as well as the board of directors and the Finance Committee; there are minutes of all those committee meetings kept and made a part of the records of the corporation.

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Q. In searching for the documents called for by the notice to take the deposition, and the agreed order which conforms to that notice, I believe, did you go through the Executive Committee minutes, as well as the Finance Committee minutes and the regular board meeting minutes?

A. Yes. Our minutes are indexed, and so the index was reviewed to collect all minutes of either the board of directors, the Finance Committee or the Executive Committee, whichever committee it might be.

Mr. Anderson: Off the record, please.

(Discussion off the record).

Mr. Anderson: It has been agreed between counsel that all the documents produced, which came from the minutes of United States Steel Corporation are to be copied, and that counsel for plaintiff will be furnished with copies of each of said documents.

The Witness: May I clarify your remark to indicate that you are not interested in receiving copies of each of the minutes, as recorded in the Finance Committee minutes, where the minutes are identical to minutes that had been adopted previously, is that correct?

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In other words, the one set of minutes reading "There was presented a report summarizing the finance transactions and results of U. S. Steel Homes Credit Corporation—" that may appear monthly, or approximately every month, for a number of years.

Mr. Anderson: No. In connection with that document, what we are interested in is your furnishing us with what would be a copy of the document which you have just read, plus a copy of the notation attached to that document, which explains that it is ordinarily in the minutes on a monthly basis.

The Witness: Correct. Similarly, with respect to authorizing proxies for stockholder meetings, are you interested in this minute at all, or do you want a statement to the same effect as—

Mr. Anderson: Actually, we are not interested in that minute at all.

The Witness: Now, as to the minutes produced here today from the Finance Committee and Executive Committee or board of directors of the corporation, all of these are copies which will be readily

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available, except that I will have to copy same, or obtain another copy of this, because this is the only copy that I have with respect to the enclosure or attachment to the January 12, 1954 meeting, which was the initial one setting forth the program for organizing the U. S. Steel Homes Credit Corporation.

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April 21, 1964
3:00 o'clock P.M.

RICHARD C. DYAS, having been duly sworn by the Notary Public, was examined and testified as follows:

Examination by Mr. Anderson

Q. Mr. Dyas, would you give us your full name, please?

A. Richard C. Dyas, D-Y-A-S.

Q. What is your home address, sir?

A. 505 Herbert Springs Road, Alexandria, Virginia.

Q. Do you regularly commute between Virginia and New York?

A. Yes. And other points connected with our business, such as New Albany, Indiana, and other points.

Q. What company or companies do you work for?

A. I am employed by the United States Steel Corporation and I am assigned to the U. S. Steel Homes Credit Corporation. My employer is United States Steel Corporation.

Q. Do you receive your compensation on checks written through United States Steel Corporation bank accounts, or through accounts held by U. S. Steel Homes

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Credit Corporation?

A. United States Steel bank accounts.

Q. Is your primary responsibility in connection with the U. S. Steel Homes Credit Corporation?

A. The major portion of my time is spent in that work, yes. But I am an assistant to the treasurer of United States Steel. And I work on assignment, I handle other matters also.

Q. What is your title, or position, with U. S. Steel Homes Credit Corporation?

A. I am vice president and treasurer. That is a change since the time of the affidavits and our answers to the interrogatories were made. This occurred about two months ago.

Prior to that, I was vice president and general manager. The term general manager has been dropped and I am now vice president and treasurer.

Q. How long have you been associated with the work of U. S. Steel Homes Credit Corporation?

A. Since its organization.

Q. Is U. S. Steel Homes Credit Corporation a separate corporate entity?

A. Oh, yes.

Q. Does it make regular yearly financial

statements, or give regular yearly financial reports to United States Steel Corporation?

A. Yes, as a matter of fact the accounts are maintained by the comptroller's officer of the United States Steel Corporation.

Q. I believe in accordance with the agreed order that has been entered in this case, you have produced certain documents or records today; is that correct, Mr. Dyas?

A. That's right.

Q. Would you identify those records, please?

A. Well, these on the top are certain statements, financial statements, annual and semi-annual, of the Na-

tional Homes Corporation, which I stated in my answer to the interrogatories we had in our possession; these are those documents.

Q. What else do you have there?

A. Beyond that, I have here the annual audited financial statements of the Credit Corporation for the years, or dated December 31, 1957, 1958, 1959, 1960 and 1961.

These are statements by Price Waterhouse & Company, auditing firm, and are copies of the same statements which we provided for each of the years

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covered, to the Federal National Mortgage Association and the Federal Housing Administration in Washington.

Q. May I see those financial statements, please?

(Witness hands documents to Mr. Anderson).

Mr. Anderson: Will counsel stipulate that we be furnished with a copy of each financial statement previously identified by Mr. Dyas?

Mr. Reutlinger: Yes.

Mr. Dyas, do you have extra copies of those, or will you have to make copies?

The Witness: No, these are extra copies.

Mr. Reutlinger: They may have these?

The Witness: Let me check with my secretary. I think so, but I'd better make sure.

Those are a few of the transmittal letters pertaining to these reports. I couldn't find them all. That is all I could find (handing).

Mr. Anderson: Please note for the record that Mr. Dyas has also produced copies of some of the transmittal letters which accompanied the financial statements which he has previously described, and that we're not interested in

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obtaining copies of the transmittal letters which he has furnished.

* * * * * * * *

Q. Mr. Dyas, would you tell us briefly your functions and responsibilities with what I will henceforth

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call The Credit Corporation?

A. Well, under the general supervision of the president, who is Mr. Lang, I supervise the operation of our office in New Albany, Indiana, which is the office from which our operations are actually conducted.

I give prime attention to administrative matters within the Credit Corporation, and I act as president, or with the powers of the president, in the absence of the president.

That's a brief summary. I will be glad to expand it any way you want.

Q. Do you have final decision-making authority within the operation of the Credit Corporation?

A. To the outside world, yes; my signature on a contract or a document would be binding.

Within the corporation, we act quite informally. I sometimes act in direct consultation with Mr. Lang on matters of complexity or importance. Other times I operate on my own authority, if they are not of complexity or importance.

Q. Would you state your understanding of the general purposes for which the Credit Corporation was established?

A. Well, the general purpose is to provide financial

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assistance to customers or dealers of the United States Home Division in instances in which they apply for such assistance, and seem to be unable to obtain the same sort of assistance on reasonable terms from normal sources.

The underlying purpose being to compete with other building material manufacturers, sellers, lumber yards, brick factories, prefabricated house manufacturers, who provide assistance to their customers.

Q. In approximately how many states does the Credit Corporation do business?

A. I guess about sixteen; that's a guess. We write it down every year in our records for some purpose around here. But I think it's around sixteen; I'm guessing at that.

Q. From your own personal information, do you know whether or not the figure of sixteen which you use was the same number of states in 1958, and through 1961 and 1962?

A. Oh, it might be similar. We add a state when we have a new business relationship established in a state. There are not too many. The trade territory was pretty well covered in 1958. I would say that there were very few more since then.

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Q. Are you acquainted with the various steps which the Credit Corporation has undergone in the various states in which it is qualified to do business in order to actually qualify?

A. I am not familiar with them, no.

Q. Would it be a correct statement to say that the Credit Corporation is an established means of obtaining the sale of homes manufactured by the Homes Division of United States Steel Corporation?

A. To the extent that a dealer borrows money from us, and uses it for that purpose, I would say that we would be helpful to the Homes Division in making sales.

Q. Does the Credit Corporation, to your knowledge, make any loans which are not related to the sale of prefabricated homes manufactured by the Homes Division of United States Steel Corporation?

A. I can't think of any loan they ever made to a dealer or for any purpose other than to provide working capital, to conduct building projects utilizing products of the United States Steel Homes Division.

Q. Tell us generally the procedure followed whereby the Credit Corporation becomes involved in a transaction with a customer of the Homes Division.

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A. First, contact is made by the Homes Division, a representative of the Homes Division—it could be the president, it could be the sales manager, it could be a salesman—who will informally discuss with us an application made by a dealer for a certain type of financial assistance, and there are different types, many different types.

On the basis of that discussion, quite often, we turn down the request. Perhaps we might say there is no use pursuing this because it is not the sort of thing that we feel we ought to do, or can do, or should prudently do. Or we might say, well, we'll be happy to negotiate with the dealer.

In that event, depending upon the location, we may go with the representative of the Homes Division to the dealer's establishment, or the Homes Division representative may bring him into our office. And we sit down and discuss the situation and conduct normal negotiations in a financial transaction.

Sometimes they are fruitful, sometimes they are not. Sometimes we do what the dealer would like us to do, sometimes we will do half of what he would like us to do, and then we won't do it at all.

We wind up with an agreement in which the dealer,

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in effect, offers to make a loan from us, and we agree to grant it to him.

Q. With regard to the transaction with Fortner Enterprises, which is of course the subject matter of this litigation, did that take substantially the form which you have described in your previous answer?

A. Exactly that form.

Q. As a result of such a transaction, a document called a loan agreement is entered into, I believe, between Credit Corporation and the borrower, is that correct?

A. It was in the Fortner case, and that's the usual way to do business. But in the Fortner case, there was a loan agreement.

Q. Were there, prior to December 31, 1962, any such transactions in which a loan agreement was not entered into between Credit Corporation and a borrower?

A. I can't remember any. But it would be normal, if upon the closing of the loan and the disbursement of the money, the transaction was completely executed upon the passing of the promissory note and the company documents and the passing of the check.

In that event, there would be no occasion for a loan agreement. I can't think of any.

I was just qualifying it because if there were any such transaction, there wouldn't be an agreement, naturally. There is nothing to be done, and a transaction is executed at the time it is closed.

Our loan agreements are signed at the time of closing the loan, not at some prior date.

Q. Let me see if I can understand this, then—

Mr. Reutlinger: Let me interrupt, and I think this will clarify this.

What you are saying is that it is possible, although you don't recall it, that the negotiations did not lead to a loan agreement, but there was a meeting of the minds, and there

was an actual lending of the money, and the note and the mortgages were passed at that time?

The Witness: That's right; in which event there is no reason for an agreement.

Mr. Reutlinger: For a prior agreement, a commitment? I think that that that's where you are both off base, or not understanding each other.

Mr. Anderson: I understood exactly what he meant.

The Witness: We don't sign agreements in

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advance of the closing of the loan transaction, we sign it coincidentally with. We don't sign an agreement today that six months from now we will make you a loan. We sign it at the time.

And that agreement doesn't cover an agreement to make a loan. It covers the terms and conditions of the administration of that loan which is closed at that time.

And naturally, if the whole transaction is executed upon the passing of the papers, there is nothing to have an agreement about. The note itself is the loan agreement.

Q. Let me see if I understand what you are getting at, then.

If a dealer comes to the Credit Corporation desiring to erect, let us say, two homes immediately, and needs initial construction financing, if I understand your answer correctly, there would be a direct loan made by Credit Corporation, receiving a note and a mortgage on the property in question, and that the funds would be distributed at the time the note was signed. And therefore, no loan agreement would be entered into?

A. Well, it's not a very good illustration, because

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there, the normal course would be for an agreement to be entered into, which would spell out the terms and condi-

tions under which we would disburse the money as construction progressed.

But say it was a loan to buy five lots; five developed lots, let's say. You don't have to have an agreement about that. You'd simply close the loan and disburse the money.

And at the time you close the loan, you'd take a mortgage on the lots, and that would be the end of it.

Q. In that example that you have just given, then, no loan agreement would be entered into?

A. There wouldn't be anything to agree to. The transaction would have been consummated.

Q. With regard to such transactions as you have described in the illustration you have just given, are many or few of such transactions entered into by the Credit Corporation?

A. I can't even remember now, but I am going to say that there might have been; there might have been one or two. Because every transaction we ever made hasn't related directly to building a house, for instance.

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Q. Would you be able to obtain the names and addresses of those persons with whom such transactions have taken place within the period 1958 through 1962?

A. I will be glad to.

Mr. Reutlinger: These are transactions without loan agreements?

Mr. Anderson: That's correct.

Mr. Reutlinger: Transactions, if any, not involving loan agreements during 1958 to 1962?

Mr. Hamilton: I don't know about "if any."

Isn't there direct testimony that there were some?

Mr. Reutlinger: The direct testimony didn't indicate that there were any. But if there are any, we will find out and supply you with that information.

Q. Mr. Dyas, have there been many or few loans made by the Credit Corporation which the Credit Corporation did not consider to be financially sound risks, using business and financial principles and judgment?

Mr. Reutlinger: I will let the witness answer, but the words "many or few" are quite

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broad. Would you want to ask him about numbers or percentage? What I think is a few and what you think is a few might be different.

Mr. Anderson: We will ask him to explain his answer.

A. Well, you say sound principles. If a loan were a bankable loan, we wouldn't have an application at all, in all likelihood. Of if we did, we'd refer the dealer to the bank.

So that from a strictly banking standpoint, you can't say that any of our loans are made on strictly sound banking principles, none. They are made to provide working capital to people who don't have working capital. And the fact that they don't have it pretty well indicates that they are not prime financial risks.

So I'd say that most loans we make are not bankable loans, are not made on sound banking principles.

Q. Are you familiar with the underwriting agreement entered into between the Homes Division and Credit Corporation on March 30, 1962?

A. Yes.

Q. There is attached to that a list of companies which are the subject matter of that under-

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writing agreement.

As of the date of that agreement, were these most of the companies with outstanding loans from Credit Corporation?

A. You say did these companies have loans?

Q. Do they represent most of the companies that had loans?

A. I can't answer that, I don't know. It looks like quite a list. I'd have to compare it with the full list to know whether it was most or less than most. I don't know.

Just looking at a list, I can't compare it as to whether it's most loans we made or not. I don't know.

Is there a total on it?

Mr. Reutlinger: No, there is no total as regard the outstanding commitment.

The Witness: I can't answer that without reference to records.

Q. What was the purpose of entering into this underwriting agreement between Homes Division and Credit Corporation?

A. Well, the main purpose is this: Competition in the building industry has required the acceptance by

lumberyards, brick factories, prefabricators and others, of longer and longer risks.

We reached a point in the Credit Corporation some time ago that in order to compete we found—that is, in order for the Homes Division to compete—we found that it was necessary to take risks which had to be classified as commercial rather than banking risks.

And in those cases, then, we require the Homes Division to underwrite that risk as a commercial risk in the promotion of its business.

Q. These particular types of transactions that you have just described are transactions entered into by Credit Corporation in order to gain or retain a substantial entry into a particular market area surrounding the location of the subdivision or subdivisions in question; would that be correct?

A. Well, the motivation comes from the Homes Division. They may want to open a new territory, they may want to increase sales in a particular territory, they make the determination. We don't.

Q. The negotiations which were entered into between Credit Corporation and Fortner Enterprises in late 1959 were entered into with the purpose of obtaining

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or expanding the Homes Division's market area in Louisville and Jefferson County, generally that area, would that be correct?

A. I can't answer that. I expect that's true, I expect that they wanted to do business in Louisville. But we didn't make that decision.

Q. Doesn't Homes Division, at the time that it requests you to approve or to enter into negotiations concerning a loan, state its reasons for wanting that particular loan?

A. Not necessarily, no.

Q. Do you recall whether such reasons were stated in the initial presentation to you or Credit Corporation in late 1959?

A. I don't remember it. It might have been, but I don't remember if it was. This was just another dealer making an application, as I remember, at that time.

Q. You have used the word "compete" a number of times in your testimony.

Would you tell us whether or not, from your own information, the terms offered by Credit Corporation to borrowers were more or less favorable than those of similar organizations providing financing assistance

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for other prefabricated home manufacturers?

A. I can't answer that. I don't know. I don't know what other terms are offered.

Q. On what basis, then, did you determine that the particular loans which you were making were competitive?

A. The reason that the dealer gives us is that he can't obtain the working capital through other sources.

Q. The record indicates that the first loan agreement between Fortner Enterprises and Credit Corporation bears a date of October 1960, and that the second transaction occurred in August of 1961.

Do you recall a discussion, or any discussion, between yourself and representatives of Homes Division in January, February, March or April of 1960 concerning Homes Division taking over and building the subdivision, if Credit Corporation had to foreclose on Fortner Enterprises?

A. Well, I don't remember any meetings at that time. That doesn't mean to say that they didn't exist. I just don't remember any meetings.

I do remember that before we made this loan, we asked the Homes Division to assure us that if it got into trouble, and we had to take it over, whether

they would assume the responsibility of managing it, because we didn't have any facilities to do so.

Now, whether that occurred at the time you state, or whether it occurred in meetings or in correspondence, I can't state. I do know there was such an assurance.

Q. You did obtain such an assurance from Homes Division?

A. That's right, because we had just been through another situation, in another city, in which it became incumbent upon us to take over the property upon default of the borrower, and we had no facilities for managing it.

Q. What other transaction was this, to which you refer?

A. It was a loan to a concern called the Andover Development Corporation in Chicago Heights, Illinois.

Q. Was this Andover transaction one that was a take-over through legal action, or a take-over on voluntary or other basis?

A. Voluntary basis. They gave us the deed to the property. They failed and couldn't continue, offered us a deal, and we took it.

Q. How many other such transactions have there been between the years 1958 and 1962, in which

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Credit Corporation has taken over a subdivision or a development without litigation—

A. None, no others.

Q. —than the Andover situation?

A. Andover is the only one. We had one foreclosure, whether it was in that period I don't know.

Mr. Reutlinger: You mean one other foreclosure?

The Witness: We had one foreclosure.

Mr. Reutlinger: One other than the Fortner?

The Witness: One other than the Fortner.

Mr. Anderson: Fortner is not within 1958 to 1962.

Mr. Reutlinger: That's right.

Q. Mr. Dyas, I show you documents numbered 238 through 240, which were furnished to us by the Homes Division for our inspection and copying, the first one being a letter of August 1, 1962, from Mr. Boyd to Mr. Russell (handing).

Let me ask you, first of all, whether you have seen that letter and the attachments previously?

A. Well, I have to answer it in two parts. Yesterday, for the first time, my attention was called to it. I found it in our file there, without any notification

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or response, acknowledgment or anything else; the letter and the statistical information attached.

The memorandum entitled "Construction Financing" was not attached, and to my knowledge, was never attached. I had never seen it before until yesterday; that is, the memorandum entitled "Construction Financing."

The other I may have seen and may not have seen. At least, it was in the file. But it required no attention, and no notice, and none was given. And I didn't remember it until I found it in the file.

Q. There are two documents attached, one entitled "Construction Financing," to which you have alluded, which has some ten pages, and then another at the end of that, entitled "Land Acquisition and Development Financing," which has some 16 pages.

I assume that in your previous answer you were referring to both of these documents?

A. To both, yes; I had seen neither of them.

Q. The second document, the one with 16 pages, entitled "Land Acquisition and Development Financing," appears to be a copy of a speech given on or about March 27, 1962.

Let me ask you if you have read this particular document since it has been called to your attention

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A. No, I will say I haven't. It was called to my attention yesterday. I flipped through it, I didn't read it, no.

Q. Do you have any recollection of a meeting of salesmen, or salesmen and executives of the Homes Division, which took place in March of 1961?

A. I have no knowledge of it, no.

Q. Do you, yourself, recall giving that statement or speech?

And before you answer that, I will ask you to again thumb through the document, if you feel you are not sufficiently familiar with it at this time.

A. I have never seen it, and I have never made any speech of this kind.

(Witness reads document).

I will just have to say I have no knowledge of it.

Mr. Anderson: Will counsel stipulate at this time that this document did come from the files of the United States Steel Corporation?

Mr. Reutlinger: I don't know where it came from. Therefore I cannot stipulate. I suggest the way to find out would be to take Mr. Boyd's deposition.

I am not trying to put thorns in your path

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unnecessarily. I just can't agree to something that I don't know.

Mr. Anderson: I am not asking you anything except to agree that it came from the United States Steel Corporation's files.

Mr. Reutlinger: I am sure if you have it, in response to that turn-over, that's where it came from; I don't think you made it up.

Mr. Anderson: I certainly didn't.

Mr. Reutlinger: But I don't know whether it came from Credit Corporation's files, or U. S. Steel's files, or where it came from.

Mr. Buchanan: I will stipulate that it came from the United States Steel Corporation's files, namely, the files of the law department of U. S. Steel.

It was one of the documents which referred to the Fortner matter, and as such it was one of those that was passed on to Mr. Reutlinger.

Mr. Anderson: That is all I wanted to establish at this time.

Mr. Buchanan, let me ask you if you have any information as to the source of this particular document, who made the speech, in other

words.

Mr. Buchanan: I have no information about it. In fact, I had never really read it thoroughly enough to see what it was about when I saw that it was attached to this letter. I don't know who gave the speech, or from where Dave Boyd might have gotten it. I think he would be the only one to get that information from; and I have never questioned him about it.

Q. Mr. Dyas, how frequently do you get to the New Albany plant? And let's confine it to the past six years.

A. Oh, I would average about two trips a month.

Q. Do you participate in most of the final negotiations regarding loans?

A. No. I participate in very few, outside of just the basic determination. The New Albany people go ahead and negotiate the details.

Q. Who would those New Albany people be?

A. Mr. Rawlins and Mr. Leonard. I sign the loan agreements, I sign the papers. But they prepare them, they negotiate the various details, various requirements.

Q. Are you generally familiar with the methods of operation of the salesmen of the Homes Division?

A. No, I am not. When you say "generally familiar," I guess I'd have to say yes. I know that they have territories and they call upon prospects and they offer the product for sale. But I don't know how they do it, or when or where; I have no contact with that.

Q. Are you familiar with the authorizations from the executives of Homes Division to the salesmen regarding their presentations to their potential customers concerning financing?

A. None whatever.

Deposition of Richard C. Dyas

Q. Have you, yourself, ever participated in any annual meetings held by Homes Division in connection with their sales of their products?

A. I attend on invitation the annual meeting of dealers of the Homes Division every year. It's usually a two or three-day session conducted by the Homes Division, at which the product line is demonstrated and the various services are explained.

I am usually called upon to make a few remarks. They usually last four or five minutes and consist of the latest story I can think of, because there is not much else to talk about.

Q. From your participation in these meetings,

have you had occasion to observe whether or not at that same time, or prior to, or immediately following the dealer meetings, meetings are held with the salesmen of the Homes Division?

A. You mean with us, with the Credit Corporation?

Q. No. First of all, just meetings of the salesmen. Do you know whether or not they are held either immediately before or immediately after the dealer meetings?

A. I can't say that I know they are held. I have heard references to what they call seminars. They have meetings of the salesmen called seminars. I assume that that is customary in every business.

But I don't know when they are held, where they are held, or what the subject matter of the meeting is: I have never attended one.

Q. The annual dealer meetings, when are they usually held?

A. In the summer; June, July, ordinarily.

Q. And this has held true over the past six or seven years?

A. Yes, I believe ever since—well, six or seven years, yes. I don't know how many years.

Q. Are you familiar with the loan agreement entered into between Fortner Enterprises and the

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Credit Corporation?

A. Well, I expect I am. I haven't looked at it in a long time, but I guess I signed it. I don't remember.

Q. I show you a loan agreement apparently dated August 2, 61 (handing).

Will you look at that and tell us whether or not that document appears to be one of the loan agreements between Fortner Enterprises and the Credit Corporation?

A. Well, sir, it looks like it, yes. I don't know whether this is a draft of one which was subsequently abandoned, or amended, or something.

I could tell, I think, if it were an executed copy, but this doesn't show any signature. I have no reason to think that it isn't. I don't know whether it is or not.

Q. Do you have in your own file an executed copy of the loan agreement between Fortner Enterprises and the Credit Corporation?

A. No, I do not. Those files are all maintained in our New Albany office, the original document files.

Mr. Reutlinger: If you are looking for the original documents in this case, I have them. But I didn't bring them up here. I didn't think we'd get into that, since it is no secret what is

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in them.

Mr. Anderson: My copy, or at least the copy that I have in my file, is not a signed copy, and I—

Mr. Reutlinger: Mr. Fortner doesn't have a copy?

Mr. Anderson: I am saying that the copy I have in

my file is not signed. You do not have with you copies of the loan agreements?

Mr. Reutlinger: No, I didn't bring those. I brought a full carload, and had to sacrifice something.

The Witness: Just looking at it, these figures don't check with my recollection of what the loan arrangements were. This may have been a draft that was never consummated, or something. I am just talking at random now.

But I thought these two land notices—I thought that one was $88,000 and I thought one was $231,000. This may have been the second loan.

Mr. Reutlinger: This is the August 1961 loan, the second loan.

The Witness: Well, $59,000, that is the right amount for the land loan. I have no reason

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to doubt that it is. I don't know.

Q. Assuming that this is a correct copy of this second loan agreement that was entered into, under Part A, Subsection 1c, there is a promissory note described in the amount of $2,950.

Sections a. and b. above that describe what generally would be termed a land note and I believe a collateral note.

Mr. Reutlinger: No, the collateral note is the $2,850 note.

Q. Section a. refers to the land note, would that be correct?

A. That's right.

Q. And b. is the construction note?

A. Yes.

Q. And c. is called the collateral note?

A. Right.

Q. Would you explain the conception of a collateral note, please?

A. That is our means of protecting ourselves against violations by dealers of their representations and agreements to use the loan proceeds for the purposes for which they solicited them.

It is possible, when we make a loan, for instance,

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to develop a group of lots into salable form, for a dealer at that point, having developed them with the proceeds of our loan, to put them on the market, take a profit at the enhanced value of the property. That is possible.

In that event, we have always felt that we should be entitled to something more than simple interest on a loan which has not fulfilled its purpose. We felt that in an event like that, it's reasonable to expect that we would get some compensation commensurate with the risk involved in that sort of financing, without the increased benefit of the sales of our product.

That is the basic reason for it.

I just have to expalin, we are not in the land financing business, that is not our business. If it were, we would operate in some other way.

But when a man uses our facilities, or intends to use them, simply as a convenience to himself, to make a profit in land development and speculation, we feel we are entitled to some additional compensation. We can't protect ourselves any other way, that we have ever devised.

Q. I believe your transactions, such as this

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one, bear six percent interest on the principal of the land note and the construction note; is that right?

A. That's right.

Q. And there is also a one half of one percent charge in addition?

A. Sometimes; usually, yes.

Q. Again, we assume that this document is an accurate copy of one of the loan agrements entered into between Fortner Enterprises and the Credit Corporation.

I believe on page two, paragraph 2H, this particular document does provide for the one half of one percent—

A. It apparently does, this document. Yes.

Q. How is the amount of the collateral note generally computed, and how was it computed specifically in this particular loan agreement of August 2, 1961?

A. Well, on this particular agreement, it was five percent of the amount of the land loan.

Q. Is five percent generally the figure which the Credit Corporation uses, or does that vary?

A. It varies, but I would say it generally is true.

Q. During the period 1958 through 1962, were there land and construction loans made in which a

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collateral note was not involved?

A. I can't answer that. Yes, I can answer it, too. Many times it was not involved.

Q. Were there factors which distinguish the transactions in which the collateral note was not involved from transactions such as this one?

A. Yes, there are. The distinguishing factors consisted primarily of our previous experience with the borrower. We have dealers—the Homes Division—who have been dealing with us, the Credit Corporation, over many years. We have great confidence in them. We know their ability, we know what they have done, we know what they can do, and what they will do; it's a matter of an established relationship.

On any new dealer who we don't know, who could conceivably be using us as a convenient financing device, with no real intention of complying with his agreement, partic-

ularly one with no experience—assuming such a case—of very little experience in building, and certainly not a professional home builder, we look upon with some suspicion, and in those cases, customarily, we would require such a note.

But we don't with established customers in whom we have confidence.

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Q. Your conception of the use of this collateral note is appliciable to a situation where a dealer might borrow money from the Credit Corporation to develop land, and then sell the lots individually to others; or equally applicable to a situation where he might borrow the money from the Credit Corporation, use it to develop the land then refinance the project; would that be correct?

A. Yes, naturally.

Q. And is this collateral note designed to, as you have termed it, protect the Credit Corporation in either one of these events?

A. Yes, it is designed to provide us additional compensation if the purpose of the loan is not fulfilled.

Q. And the purpose of the loan is to see that homes manufactured by Homes Division are built in the entire subdivision?

A. The purpose of the loan is to provide the dealer the capital for the purpose for which he applied for the loan. Where the dealer comes to us and applies for a loan for the purpose of building United States Steel homes, we consider that a binding contract.

Q. Mr. Dyas, again referring to this loan

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agreement that we have been looking at, at page 2, paragraph a, would you read the heading that begins with number two, and then paragraph a? Read it out loud, for the record, if you will.

A. (Reading) "2. The borrower agrees to do and perform the following acts and things: A. To erect on the lots free from all mechanics lines, on or prior to the maturity of the land note, the construction note and the collateral note, a total of not less than twenty-seven single family dwellings, consisting primarily of components produced and furnished by U. S. Steel Homes Division, United States Steel Corporation (hereinafter called the "Dwelling Houses"); and to construct said dwelling houses in accordance with all applicable ordinances and statutes, use restrictions of record, and in accordance with the requirements of all regulatory authorities, and in conformity with the requirements of the Federal Housing Administration (hereinafter referred to as "F.H.A."); and/or the Veterans Administration (hereinafter referred to as "V.A.")."

Q. Mr. Dyas, this paragraph that you have just read, is that in substance a condition or provision which appears in all of the loan agreements executed

by the Credit Corporation?

A. I simply can't answer these general questions. It's a usual provision in a case where these are the facts involved. Whether or not some one agreement didn't have it, I can't testify to, I just don't know.

Again, if it's some dealer that we knew, had dealings with for many years, we could take his word for what he was going to do, we might not spell it out.

I can't remember any such case, but it's possible.

Q. Your previous statement concerning the purpose for which the borrower requested the loan would lead me to believe that there may have been purposes expressd by the borrower which did not involve the purchase of homes purchased by the Homes Division.

Am I or am I not mistaken in my understanding of your statement?

A. You mean in this case?

Q. Generally.

A. No. Every loan we make is for the purpose of providing working capital to a dealer who is engaged in building U. S. Steel homes, and for that purpose.

Now, I say every loan we make. I don't like to be hypertechnical, but we have made loans which

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didn't provide working capital, which was for some unrelated purpose.

But for working capital purposes, that's the only reason we make loans, and only when the application is for that purpose.

Q. I show you interrogatory number 16, Mr. Dyas, and the answer which you made in response to that interrogatory, and also ask you to refer to interrogatory number 17, and the answer thereto.

I think you gave both these answers, Mr. Dyas (handing).

(Witness reads document.)

Q. Mr. Dyas, I believe you have had an opportunity to read interrogatories 16 and 17 and the answers given?

A. That's right.

Q. In light of the statement that you made in your answer which you just gave, are the answers to those two interrogatories still correct?

A. Yes, those are correct.

Now, if you want to narrowly interpret the meaning of words, you can say that every loan we—every loan we have made hasn't been for the specific purpose of paying some subcontractor on a subdivision, or paying

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some carpenter on a house. But they have been directly for the purpose of providing capital to dealers needed for the utilization of the products of U. S. Steel homes.

I will give you an example: We had a very strong dealership, we had three principals. The three disagreed. Two decided to buy out the third. We made a short-term loan to the two to buy out the third, and the loan was repayed very promptly. That was directly connected with the business of selling U. S. Steel homes. It wasn't directly connected with paying some subcontractor.

Now, if you want to interpret it that narrowly, I don't know how I could answer the question.

My response, as I have tried to say, is that we make loans for no purpose other than facilitating the business of dealers of United States Steel homes.

Q. Could you give us the name and address of the dealer, or two gentlemen, whom you have just described?

A. Well, the names of the three were Fred K. Johnson, Forrest J. Stump, and Carter C. Willsey, all of Dayton, Ohio.

Q. What is the names of the subdivision or

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development with which they were connected?

A. They had dozens of them, they had dozens of subdivisions.

Q. Did they have one particular corporation under which they operated?

A. They had a separate corporation for each project.

Q. Would you check your records at some convenient time and furnish us with the names and addresses of these corporations?

A. At that time?

Q. Yes, whatever the latest information is that you have.

A. The corporation would be dissolved as fast as the project would be wound up; it would be dissolved and they would found another one. I'd have to know the exact time. Otherwise, these corporations would last no longer than the project would last.

Q. Give us as of this present time the location where these gentlemen may be found.

A. I don't know Johnson's whereabouts. He is the one who was bought out. Willsey is at 424 Far Hills Avenue, Dayton, Ohio, and Stump is now president of the United States Steel Homes Division.

Q. You say Mr. Stump is now the president

of the Homes Division?

A. Right.

With that information, do you need the names of all these corporations?

Q. No.

Mr. Dyas, can you tell us whether or not you are familiar with the pricing policies of the Homes Division?

A. No, sir, I am not familiar.

Q. Do you participate in any way in the setting of prices or price policy in the Homes Division?

A. No, sir.

Q. Are you connected with, or do you participate in any way, in the purchases or purchasing policies of the Homes Division?

A. No, sir.

Q. Has there ever been any substantial conflict between the Homes Division and the Credit Corporation, insofar as the loans and loan commitments were concerned?

A. Well, I think that you will have to define the word "conflict."

Q. Disagreement or dispute.

A. We don't always have the same viewpoints, no. Quite often, the Homes Division thinks a risk is justified,

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which we don't. Every so often we have presented to us some proposal which we can't agree with, and turn it down, or modify it, or do something else that the Homes Division doesn't exactly agree with, but which we decide to do that way.

Q. Mr. Dyas, how long ago did Mr. Boyd transfer from the presidency of the Homes Division?

A. The early part of January, the first few days of January 1963.

Q. Were you involved in any way in his being transferred from the Homes Division to some other job?

A. No, not in the least. No connection whatever.

Q. Do you know the reason for his transfer?

A. No, I don't know the reason. I have heard people talk and gossip and rumor, but I don't know.

Q. What information did you obtain?

A. Generally, that he lacked home building experience.

Mr. Reutlinger: I don't think it is really pertinent to the issues in this lawsuit, nor do I think it will lead to relevant evidence. But the question has already been answered.

Mr. Hamilton: I think that it could lead to an element in the lawsuit. One of the allegations is that these parts which we received were inherently defective. And of course,

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if you have a man heading up an operation who doesn't know what he is doing, why, it might have a reflection on the components—

Mr. Reutlinger: Maybe the thing to do would be not to take the deposition of a man whose information is based on rumor.

Mr. Hamilton: I was suggesting to Mr. Anderson that he ask Mr. Dyas who told him this, so that we might take the deposition of these people.

Q. From whom did you obtain this information?

A. I don't know.

Q. You don't remember?

A. I don't remember.

Q. Mr. Dyas, when did you first become aware of the complaints of Fortner Enterprises in regard to the quality of the prefabricated homes of the Homes Division?

A. At a meeting in the office of the Credit Corporation in connection with the second loan, the 1961 loan. I don't remember what the subject matter of this discussion was, whether it was the conclusion of the agreement, or the first stages of it, or some place in between. I happened to be present.

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And at the conclusion of this discussion—there was a Homes representative there, I believe Mr. Day—and at the conclusion of this, after all the necessary agreements had been made on the second loan, someone, Mr. Fortner or his associate—and I don't remember his name—made some reference to the fact that he would like to meet with some of the Homes Division people because he was having some kind of trouble with the product.

It was just as vague as that to me, my recollection. I had no responsibility in connection with it, my work was done.

And I remember at the conclusion of the conference, some conversation back and forth with the Homes representative to that effect. And that was the first time I had heard of any such problem.

Q. And this would have taken place on or prior to August 2, 1961?

A. About that time, yes. It was in connection with concluding that loan.

Q. When was the next occasion on which you received any information concerning complaints as to the quality of the homes, or defective components in these homes?

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A. I can't answer that exactly. The next thing I recall was being asked by the Homes Division—I don't know by what channel, by what means—and asked if Mr. Rawlins and I would attend a meeting with Mr. Boyd, Mr. Black and Mr. Reutlinger, with Mr. Fortner and his attorneys, at his attorneys' offices, to discuss some problems which had been under discussion, as I remember it, between the Homes Division and Mr. Fortner.

Q. Prior to attending this meeting, did you have a meeting with the representatives of the Homes Division?

A. Not to my recollection, no.

Q. Did you attend such a meeting?

A. Yes, I did.

Q. Where was this held?

A. I attended it at the offices of Mr. Fortner's attorneys. I don't remember the firm name; Mr. Hamilton was there, and others.

Q. What took place at that meeting?

A. Well, as I remember it, the principal subject of discussion was with the many alleged defects in the product, counter-allegations of defective workmanship; general discussion between the Homes Division

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and Mr. Fortner and his attorneys, as to his complaints.

As I recall it, he was asked to provide the Homes Division a bill of particulars, a list, of such complaints, so that an adjustment might be made for work done.

I hate to quote any individual, because there were many people there, so I don't know who said what. But Mr. Fort-

ner said—it was said that there were so many complaints, and so many problems, that it was impractical to provide such a list, that what they wanted was for the Credit Corporation to waive—concede—those contractual provisions of the loan agreement which required Mr. Fortner to comply with his undertaking to build United States Steel homes, so that he could, with the financing of the United States Steel Corporation, the Credit Corporation, finance other products.

That's the essence of that conversation, as I remember it.

Q. And I believe you took the position at that time that that would not be considered by the Credit Corporation?

A. We took the position at that time that Mr. Fortner's refusal to negotiate with the Homes Division

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did not justify coming to the Credit Corporation with a request for a concession, and that being the case, we would withhold any judgment on this concession.

And subsequently, I understand that before the meeting ended, Mr. Fortner did agree to provide such a list to the Homes Division, but didn't do it.

Q. Prior to the meeting which took place, I believe, on June 5, 1962—would that coincide with your memory?

A. I don't remember when it was, but I won't take exception to your date.

Q. I show you document identified as C-20, which is a copy of a letter from Mr. Hamilton to the Homes Division (handing).

Do you recall having seen that letter?

A. I believe it's in our file. I think that's in our file, yes. I don't like to say definitely, because I don't know. But I think it is.

Q. The document attached to that, identified as C-19, also bears the date May 11, 1962 (handing).

A. It looks like I did see it.

Q. The typewritten portion of that small memorandum identified as C-19, was that prepared by you, sir?

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A. Up here (indicating)?

Q. Yes, the typewritten portion.

A. Well, I can't tell you from my memory, but I won't deny it. I just don't remember.

It's normal, it's the normal thing for me to advise Mr. Lang if something like this had come to my attention. And I've no doubt that I did send this note to him, but I don't remember it.

Q. And I believe the handwritten portion of that document is in Mr. Lang's handwriting; is that correct?

A. Well, it's certainly not in mine. It could be his.

Q. As of apparently the date of this particular note, you were aware of at least a part of the complaints of Fortner Enterprises, as far as the quality of the homes was concerned; is that correct?

A. You say this meeting was held in June?

Q. Yes, sir.

A. Then my recollection is faulty, that I didn't know much about it before I went to the meeting, if I had seen this; I don't remember. I didn't have the chronology in mind.

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So apparently I'd seen it before June fifth, although I didn't remember it.

Q. Do you recall, immediately after seeing this document, making a summary of the then outstanding commitments of Fortner Enterprises with the Credit Corporation, and making a study of whether or not Fortner Enterprises was current in its obligations?

A. I don't remember it, but I assume there is some memorandum you are referring to. And if you are, and I prepared it, then I prepared it. I just don't remember it.

Q. Going back to this meeting which occurred at Mr. Hamilton's office, when the Credit Corporation was requested to release Fortner Enterprises of the requirement in the loan agreement to put the U. S. Steel Homes on the remaining lots in the subdivision in order to build in that subdivision conventional homes, did you not take the position that Credit Corporation would insist upon enforcement of the provisions of the loan agreement in regard to the homes to be built on the property?

A. I don't remember insisting upon it. We couldn't insist on that.

I think we suggested that if they wanted to build

other houses, they should pay us off. That's my recollection.

Q. As a matter of fact, at that time, as at the time that these loans were made to Fortner Enterprises, consistent with your previous testimony here, it was and is quite obvious that financing could not be obtained from any other source to pay you off; isn't that correct?

A. I can't answer that.

Mr. Reutlinger: Do you mean before or after the loan was made, and the property developed?

Mr. Anderson: I think the question is completely adequate.

The Witness: It sounded a little more like a statement. I wonder if you could read that to me.

Mr. Reutlinger: Property that is developed has more value than undeveloped property.

Mr. Anderson: Would the reporter please read back the question?

(The reporter read back the last question).

Mr. Anderson: I specified two particular times which I am talking about. If Mr. Dyas

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wants to answer the question in two parts, he is perfectly free to do so.

A. (Cont.) At the time we made him the loan, could he have done it otherwise, and at the time he requested the concession, could he have done it otherwise; is that right?

Q. Yes.

A. Well, at the time, he said that he couldn't. He said that the reason he was coming to us was because he wanted to borrow this money to buy out a partner's interest in a subsidiary corporation. That was his representation to us.

And if he could have obtained his financing elsewhere, then he simply misrepresented to us. We didn't know all the circumstances. We heard what he said.

Now, at the time of this meeting, whether he could have refinanced. I certainly am not qualified to answer. I think he would be more able to refinance then, than before, having had the benefit of the incremental value of the improvements on the property.

Q. I believe you left the meeting before it was concluded; is that correct?

A. Yes, sir. Our meeting was concluded, the Homes

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Division was concluded.

Q. Mr. Dyas, do you have in your file a memorandum prepared by you of the conference in Mr. Hamilton's office?

A. I expect so. I don't know. I imagine so, if I prepared one, and I think I did.

Q. Did you, in 1962 or 1961, become aware of complaints by other dealers regarding the quality of the components of the houses, prefabricated houses, manufactured by Homes Division?

A. Not to my recollection.

Q. It had not been called to your attention?

A. That's right.

Q. I believe there is outstanding at this time a commitment with Broyhill in Virginia?

A. Right.

Q. I believe that commitment has a period of at least a five-year maturity; is that correct?

A. That's right. Some of them have, some of them haven't. We have about half a dozen outstanding. The longest expires in 1966.

Q. I believe that the Broyhill commitment is one which has been underwritten by the Homes Division?

A. That's right.

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Q. What is the reason for Homes Division underwriting that particular development?

A. Because it's a very extreme risk, very extreme.

Q. How does the commitment with Broyhill compare with the commitment entered into with Fortner Enterprises, insofar as dollars are concerned?

A. Well, we have outstanding now on so-called front money loans, which are moneys not like the ones to Fortner, but loans to acquire acreage, to put in so-called off-site developments, improvements such as long sewer lines, putting in a four-lane highway through the middle of some acreage, and other such purposes; and this is called front money.

We have three million dollars outstanding on that, and we have $600,000 more committed, which has not been disbursed.

In addition to that, we have loans on subdivided sections of this acreage, which are similar to the loans to Fortner, for the purpose of putting in the streets and utilities and houses within those subdivided sections of the acreage, and I can't remember the amount.

But our present commitment on loans of that type is probably five or six million dollars.

This is a project that consisted originally of

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1,700 acres, and there is now less than half of that. I forget what is left, but we started with 1,700 acres.

It is an entire city, and it is planned to consist of some 3,500 individual houses, 1,200 or 1,300 apartment units, a shopping center, golf courses, recreational facilities and so forth.

So any comparison between that project and the Fortner project is purely coincidental. It's nothing like it.

Q. Is there a loan agreement with Broyhill?

A. Half a dozen of them.

Q. Are there any loan agreements in this group which do not provide that U. S. Steel homes have to be constructed on a portion of the property?

A. It provides that nothing but U. S. Steel homes can be constructed.

Q. Does U. S. Steel Homes make prefabricated apartment buildings?

A. Yes, sir.

Let me be really explicit: Nothing other than U. S. Steel Homes products shall be used, except with the consent of U. S. Steel Homes, having in mind that building stores and shopping facilities, and a golf course clubhouse, and a few other things of that

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type are not things that U. S. Steel Homes would provide.

But the agreement is that it shall all be of U. S. Steel Homes products, except with the consent of U. S. Steel Homes.

* * * * * * * *

A. To your knowledge, has the Credit Corporation previously been involved in any anti-trust litigation?

A. No, sir.

Q. Going back to the original negotiations with Fortner Enterprises in regard to the loans, I believe you were first contacted by the Homes Division and requested to contact Fortner Enterprises in regard to a loan?

A. That's right.

Q. Do you have any specific knowledge as to whether or not Mr. Fortner initially sought out the Homes Division, or whether the Homes Division originally sought out Mr. Fortner?

A. I can't answer that. I have no knowledge of that.

Q. All you actually know is that you were requested by the Homes Division to contact Fortner Enterprises with regard to the negotiation of the loan, or the possible negotiation of the loan.

A. That's right.

* * * * * * * *

15 UNITED STATES CODE ANNOTATED SEC. 1.

§1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided,* That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and

open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further,* That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum salers, or between brokers, or between factors, or between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890. c. 647, § 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693; July 7, 1955, c. 281, 69 Stat. 282.

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15 UNITED STATES CODE ANNOTATED SEC. 2.

§ 2. Monopolizing trade a misdemeanor; penalty.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof,

shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, § 2, 26 Stat. 209; July 7, 1955, c. 281, 69 Stat. 282.

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15 UNITED STATES CODE ANNOTATED SEC. 15.

§ 15. Suits by persons injured; amount of recovery.

Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. Oct. 15, 1914, c. 323, § 4, 38 Stat. 731.

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15 UNITED STATES CODE ANNOTATED SEC. 26.

§ 26. Injunctive relief for private parties; exception.

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court against threatened loss or damage by a violation of the of the United States having jurisdiction over the parties, antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction

may issue: *Provided,* That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission. Oct. 15, 1914, c. 323, § 16, 38 Stat. 737.

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PORTIONS OF RELEVANT DOCKET ENTRIES.

1963

9/ 5 (4392-A) Affidavit of W. L. Rollins filed.

12/23 (A) Motion to Appoint a Receiver filed by Defendant with Notice and Motion for Summary Judgment and Memorandum in support of motion for receiver and for summary judgment. Affidavit of Albert F. Reutlinger filed. Order and Judgment tendered.

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4/14 (4392-A) Motion by Armer H. Mahan as attorney for purchaser, Robt. F. Simmons and his assignee, Kenilworth Investment Co., Inc., (stating that purchaser, by counsel, files herein an assignment of his bid as accepted by Kenilworth Investment Co., Inc., and moves Court for entry of order confirming sale, taking credit and ordering deeds) and notice of hearing on motion at 2 P.M., April 17, 1964—filed. Proposed order tendered therewith. (No assignment filed or received with motion referred to above.)

4/14 Order Tendered.

4/15 (4392-A) Motion Filing Assignment of Bid—filed by Jack E. Mudd, Commissioner. "Assignment" dated 4-9-64 signed by Robt. F. Simmons, Assignor, and Kenilworth investment Co., Inc., Assignee, and proposed order tendered therewith.

4/15 (4392-A) Motion Noting Deposit And Filing Sale Bond—filed by Jack E. Mudd, Commissioner. "Bond" in amount of $83,294.96 executed by Kenilworth Investment Co., Inc., and Reliance Ins. Co., and proposed order tendered therewith. (4392-A)

Portions of Relevant Docket Entries

1964

4/16 Order dated 4/16/64 noting deposit and filing sale bond. (Judge Brooks)

4/16 (4392-A) Order (Judge Brooks) dated 4/16/64 filing assignment of bid. Copies both to Messrs. Mudd, Reutlinger, Anderson, Hamilton and Mahan.

4/16 Order (Agreed) Judge Brooks dated 4/16/64 that certain described documents should be produced by the respective witnesses having custody of same. Copies to Attorneys Anderson and Reutlinger.

4/18 Order dated 4/17/64 that (1) the report of sale held 3/11/64 is hereby confirmed; (2) The assignment of the bid of Robert F. Simmons to Kenilworth Investment Co., Inc. is approved and the term "purchaser" is referred to the assignee; (3) The purchaser be given credit for the amounts set forth together with execution of bond in accordance with the term of sale, and; (4) Kenilworth Investment Co., Inc., having complied with terms of sale, J. E. Mudd, Commissioner, shall execute three described deeds conveying to Kenilworth Investment Company, Inc., purchaser, the property described therein in accordance with the judgment rendered subject to the conditions set forth in the sale bill attached to the report of sale. Copies 4/18/64 to Armer H. Mahan and J. E. Mudd.

* * * * * * * *

5/ 1 (4392-A) Originals of 3 deeds, each dated May 1, 1964, between Fortner Enterprises, Inc., a corporation, and U.S. Steel Homes Credit Corporation, a corporation, Parties of the Fist Part, all by Jack E. Mudd, Commissioner, and Kenilworth Investment Company, Inc., a corporation, Party of the

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Second Part, with approving signature of Judge Roy M. Shelbourne thereon and certification by the Clerk of the U. S. District Court to the Jefferson County Court Clerk for record, delivered by the Clerk U. S. District Court to Jack E. Mudd, Commissioner, pursuant to the order of Court dated 5/1/64 referred to above. Conformed copies of said deeds filed herein.

* * * * * * *

6/12 Motion for entry of order confirming sale, taking credit and ordering deed as set forth filed by J. E. Rose, attorney for purchaser Richard K. Finley Corp. Order tendered. Notice of hearing 5/12/64 filed.

6/23 Motion to Execute and Approve Deed (No. 4392-A) filed by Jack E. Mudd, Commissioner.

6/23 (4392-A) Order (Judge Shelbourne) dated 6/22/64, on motion of Jack E. Mudd, Commissioner, that the deposit of the sum of $8,626.80 with the Commissioner in his account with the First National Lincoln Bank of Louisville, Ky., be noted of record herein subject to further orders of the Court; that Sale Bond dated June 10, 1964, as executed by Richard K. Finley Corporation, with surety, in the amount of $29,703.25 payable 18 months from date thereof with interest thereon at 6% per annum from March 11, 1964, date of sale, same to be secured by lien on property to be conveyed to said purchaser, be filed and made a part of this record. Said bond (which is attached to said order) filed.

6/23 (4392-A) Order dated 6/22/64 that (1) the report of sale held 3/11/64 confirmed; (2) the purchaser be given credit for the amounts set forth together

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with execution of bond in accordance with the term of sale; and Richard K. Finley Corporation having complied with the terms of sale, Jack E. Mudd, Commissioner, execute the described deed conveying to Richard K. Finley Corporation, purchaser, the property described therein in accordance with the Judgment heretofore rendered subject to the condition set forth in the Sale Bill attached to the Report of Sale.

6/23 (4392-A) Order dated 6/23/64, that Jack E. Mudd, Commissioner, having appeared in open Court and produced and executed a deed on behalf of grantors therein conveying the property as described to Richard K. Finley Corporation, a copy of said deed being filed herewith, etc. that said deed is approved as executed by the Commissioner, whereupon this Court affixed its approving signature and the Clerk of this Court is directed to certify said deed to the Clerk of the Jefferson County Court for record and that the deed be delivered to Jack E. Mudd, Commissioner, for delivery to purchaser.

* * * * * * *

7/23 (4392-A) Order of Court signed by Judge Brooks 7/23/64, providing: That deed produced and executed in open Court by Jack E. Mudd, Commissioner, on behalf of grantors therein conveying property described therein to Richard K. Finley Corp., a copy of which is filed with the order, be approved as executed by the Commissioner; that the Court affixed its approving signature thereto; that the Clerk of this Court is directed to certify said deed to the Clerk of the Jefferson Circuit Court for record; that the deed be delivered to Jack E. Mudd,

Portions of Relevant Docket Entries

1964

Commissioner for delivery to the purchaser. Copies to A. Scott Hamilton, Jr., J. E. Rose, Jack E. Mudd, Armer H. Mahan, Albert F. Reutlinger and Kenneth L. Anderson.

7/23 (4392-A) Original of deed dated 7/23/64, between Fortner Enterprises, Inc., a corporation, and U. S. Steel Homes Credit Corp., a corporation, parties of the first part, all by Jack E. Mudd, Commissioner, and Richard K. Finley Corp., party of the second part, with approving signature of Judge Henry L. Brooks thereon and certification by Clerk of U. S. District Court to Jefferson County Court Clerk for record, delivered by the Clerk, U. S. District Court to Jack E. Mudd, Commissioner, pursuant to the order of Court dated 7/23/64, referred to above. Conformed copy of said deed filed herein.

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UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

No. 4392

Fortner Enterprises, Inc., - - - - - Plaintiff,

v.

United States Steel Corporation and
U. S. Steel Homes Credit Corporation, - Defendants.

INTERROGATORIES TO PLAINTIFF.

1. In your reply to defendant U. S. Steel Homes Credit Corporation's amended counterclaim (Paragraph 3 of the Reply), you have denied, by reason of insufficient information, the allegation that the mortgage which you have admitted encumbers certain real property in Jefferson County, Kentucky (Paragraph 2 of the Reply) is a first lien on the mortgaged property, except any liens for taxes. Please describe and identify, except for real property taxes, any other liens on the property described in Paragraph 3 of the amended counterclaim of which you have knowledge. If you have no knowledge of any such liens, so state. In connection with this interrogatory, the encumbrances of easements and restrictions of record are not to be construed or considered as liens.

2. In your reply to defendant U. S. Steel Homes Credit Corporation's amended counterclaim (Paragraph 7 of the Reply), you have denied, by reason of insufficient information, the allegation that the mortgage you have admitted encumbers certain real property in Jefferson County, Kentucky (Paragraph 6 of the Reply) is a first lien on the

mortgaged property, except any liens for taxes. Please describe and identify, except for real property taxes, any other liens on the property described in Paragraph 9 of the amended counterclaim of which you have knowledge. If you have no knowledge of any such liens, so state. In connection with this interrogatory, the encumbrances of easements and restrictions of record are not to be construed or considered as liens.

(s) Albert F. Reutlinger
Attorney for Defendants
501 South Second Street
Louisville 2, Kentucky
Juniper 4-1135

Middleton, Seelbach, Wolford,
Willis and Cochran
Of Counsel

* * * * * * *

REQUEST FOR ADMISSIONS.

Defendant U. S. Steel Homes Credit Corporation calls upon plaintiff to admit the truth of the following matters set forth below, all of which treat with that defendant's counterclaim as amended.

1. Exhibit "Land Note Number 2, 1960" is a true and accurate reproduction of the original note executed by plaintiff.

2. With reference to "Land Note Number 2, 1960" and pursuant thereto, on the dates and in the amounts as set forth below, defendant U. S. Steel Homes Credit Corporation advanced various sums of money to the plaintiff.

Date	Funds Advanced
October 28, 1960	$107,175.00
June 22, 1961	26,543.00
September 20, 1961	67,299.60

Request for Admissions

3. With reference to "Land Note Number 2, 1960" on the dates and in the amounts set forth below the plaintiff repaid the defendant U. S. Steel Homes Credit Corporation as principal various sums of money.

Date	Principal Repaid
April 23, 1962	$ 260.00
May 21, 1962	2,200.00
May 28, 1962	2,200.00
May 31, 1962	2,200.00
May 31, 1962	2,200.00
June 14, 1962	2,200.00
June 27, 1962	2,200.00
July 2, 1962	2,200.00
July 10, 1962	2,200.00
July 16, 1962	2,200.00
July 31, 1962	2,200.00
August 7, 1962	2,200.00
August 14, 1962	2,200.00
August 30, 1962	2,200.00
August 30, 1962	2,200.00
September 14, 1962	2,200.00
September 21, 1962	2,200.00

4. Exhibit "Construction Note Number 1, 1960" is a true and accurate reproduction of the original note executed by plaintiff.

5. With reference to "Construction Note Number 1, 1960" and pursuant thereto, on the dates and in the amounts as set forth below, defendant U. S. Steel Homes Credit Corporation advanced various sums of money to the plaintiff.

Date	Funds Advanced
December 12, 1960	$3,300.46
December 12, 1960	4,000.00
December 14, 1960	3,870.72

Date	Funds Advanced
December 14, 1960	1,000.00
December 19, 1960	4,962.88
December 19, 1960	1,000.00
January 3, 1961	1,000.00
January 6, 1961	4,704.62
January 9, 1961	1,000.00
January 13, 1961	3,151.13
January 13, 1961	1,000.00
January 23, 1961	2,262.12
January 23, 1961	3,699.85
February 6, 1961	2,308.87
March 2, 1961	3,000.00
March 10, 1961	6,859.14
March 10, 1961	2,000.00
March 15, 1961	2,601.00
March 20, 1961	4,560.22
March 20, 1961	2,351.50
April 4, 1961	1,000.00
April 10, 1961	3,652.39
April 10, 1961	6,205.66
April 20, 1961	3,959.78
April 24, 1961	3,000.00
May 3, 1961	3,646.35
May 3, 1961	1,000.00
May 8, 1961	3,892.11
May 10, 1961	6,355.53
May 10, 1961	2,000.00
May 26, 1961	2,961.15
May 29, 1961	1,126.00
June 1, 1961	3,000.00
June 5, 1961	2,041.20
June 5, 1961	3,813.50
June 7, 1961	1,000.00
June 12, 1961	3,292.92

Date	Funds Advanced
June 12, 1961	1,000.00
June 14, 1961	2,507.50
June 21, 1961	3,034.10
June 21, 1961	6,416.91
June 26, 1961	3,000.00
July 10, 1961	6,416.67
July 10, 1961	8,576.08
July 13, 1961	6,426.82
July 13, 1961	2,000.00
July 27, 1961	4,000.00
August 1, 1961	1,147.50
August 3, 1961	1,020.00
August 7, 1961	3,102.88
August 7, 1961	2,000.00
August 9, 1961	3,094.64
August 9, 1961	3,745.36
August 14, 1961	11,353.28
August 14, 1961	7,210.90
August 28, 1961	9,405.60
August 28, 1961	4,000.00
September 5, 1961	6,873.10
September 5, 1961	4,000.00
September 7, 1961	19,334.72
October 3, 1961	3,483.20
October 3, 1961	3,000.00
October 12, 1961	10,785.11
October 12, 1961	10,519.99
November 1, 1961	12,505.86
November 1, 1961	9,000.00
November 13, 1961	12,333.24
November 14, 1961	6,281.50
November 14, 1961	8,000.00
December 1, 1961	14,242.30
December 1, 1961	7,000.00

Date	Funds Advanced
December 11, 1961	6,369.59
December 11, 1961	2,000.00
December 15, 1961	3,058.65
December 15, 1961	1,000.00
January 26, 1962	3,473.58
January 26, 1962	11,226.17
March 6, 1962	4,770.27
May 10, 1962	3,672.36

6. With reference to "Construction Note Number 1, 1960," on the dates and in the amounts set forth below the plaintiff repaid (or caused to be credited to) the defendant U. S. Steel Homes Credit Corporation as principal various sums of money.

Date	Principal Repaid (or Credited)
June 7, 1961	$5,316.94
June 19, 1961	9,540.00
June 19, 1961	9,755.00
July 5, 1961	8,692.00
July 31, 1961	7,266.50
August 15, 1961	7,840.00
August 22, 1961	9,245.00
August 23, 1961	5,103.01
August 23, 1961	6,300.46
August 25, 1961	8,416.00
September 11, 1961	5,323.81
September 20, 1961	8,061.00
September 20, 1961	8,395.00
September 22, 1961	10,214.00
September 29, 1961	7,460.00
October 9, 1961	5,703.09
October 9, 1961	7,460.00
October 9, 1961	7,460.00

Date	Principal Repaid (or Credited)
October 10, 1961	7,077.50
October 16, 1961	8,837.50
October 20, 1961	10,605.00
November 16, 1961	8,184.50
November 21, 1961	8,031.50
November 27, 1961	1,000.00
December 4, 1961	6,695.00
December 14, 1961	64,694.85*

(*This figure together with accrued interest of $2,391.36, on this date, was credited on Construction Note Number 1, 1960 and became an obligation under Construction Note Number 2, 1960, on the same date.)

December 18, 1961	5,057.78
December 26, 1961	4,995.91
December 29, 1961	8,225.00
January 2, 1962	11,880.00
January 8, 1962	6,695.00
January 29, 1962	5,092.69
January 29, 1962	7,001.00
April 2, 1962	7,842.50
April 2, 1962	6,867.00
April 5, 1962	7,460.00
April 23, 1962	7,020.00
July 16, 1962	7,249.50

7. Exhibit "Construction Note Number 2, 1960" is a true and accurate reproduction of the original note executed by plaintiff.

8. With reference to "Construction Note Number 2, 1960" and pursuant thereto, on the dates and in the amounts as set forth below, defendant U. S. Steel Homes Credit Corporation advanced various sums of money to the plain-

tiff. The initial advance of $64,694.85 as of December 14, 1961 carried with it an obligation of accrued interest of $2,391.36 as of that date and was an obligation transferred from Construction Note Number 1, 1960.

Date	Funds Advanced
December 14, 1961	$64,694.85
December 15, 1961	1,000.00
December 26, 1961	7,284.14
December 26, 1961	4,000.00
January 22, 1962	3,878.29
January 26, 1962	6,248.74
February 13, 1962	2,000.00
March 2, 1962	1,000.00
March 6, 1962	7,866.70
March 15, 1962	3,087.48
March 15, 1962	2,000.00
March 21, 1962	1,000.00
March 29, 1962	7,006.43
April 5, 1962	1,000.00
April 13, 1962	4,024.80
April 13, 1962	2,000.00
April 19, 1962	3,057.90
April 19, 1962	1,000.00
April 20, 1962	3,594.50
April 20, 1962	1,000.00
May 1, 1962	1,000.00
May 7, 1962	1,000.00
May 10, 1962	3,370.18
May 10, 1962	11,197.14
May 28, 1962	2,000.00
June 4, 1962	6,115.24
June 4, 1962	2,000.00
July 26, 1962	6,903.84

Request for Admissions

9. With reference to "Construction Note Number 2, 1960," on the dates and in the amounts set forth below the plaintiff repaid the defendant U. S. Steel Homes Credit Corporation as principal various sums of money.

Date	Principal Repaid
January 11, 1962	$9,755.00
March 7, 1962	5,699.35
April 20, 1962	5,505.78
May 21, 1962	8,509.50
May 28, 1962	8,480.00
May 31, 1962	5,755.72
May 31, 1962	7,632.00
June 14, 1962	8,244.00
June 27, 1962	7,650.80
July 2, 1962	5,068.13
July 10, 1962	5,594.50
July 31, 1962	5,047.11
August 7, 1962	4,073.62
August 14, 1962	3,830.22
August 30, 1962	8,690.00
August 30, 1962	7,460.00
September 21, 1962	11,795.00

10. Exhibit "Land Note, 1961" is a true and acurate reproduction of the original note executed by plaintiff.

11. With reference to "Land Note, 1961" and pursuant thereto, on the dates and in the amounts as set forth below, defendant U. S. Steel Homes Credit Corporation advanced various sums of money to the plaintiff.

Date	Funds Advanced
August 2, 1961	$ 2,312.00
August 2, 1961	56,688.00

12. With reference to "Land Note, 1961," on the dates and in the amount set forth below the plaintiff repaid the

defendant, U. S. Steel Homes Credit Corporation as principal various sums of money.

Date	Principal Repaid
October 10, 1961	$2,200.00
October 26, 1961	2,200.00
November 16, 1961	2,200.00
September 14, 1962	2,200.00

13. Exhibit "Collateral Note, 1961" is a true and accurate reproduction of the original note executed by plaintiff.

14. With reference to "Collateral Note, 1961" and pursuant thereto, on August 2, 1961 defendant U. S. Steel Homes Credit Corporation advanced $2,950 to the plaintiff.

15. On or about July 12, 1962 and no later than July 17, 1962, you received a communication from defendant U. S. Steel Homes Credit Corporation in accordance with a copy thereof attached hereto.

(s) Albert F. Reutlinger
Attorney for Defendants
501 South Second Street
Louisville 2, Kentucky
JUNIPER 4-1135

Request for Admissions

REGISTERED MAIL—RETURN
RECEIPT REQUESTED

July 12, 1962

Mr. A. B. Fortner, Jr., President
Fortner Enterprises, Inc.
4123 South Third Street
Louisville, Kentucky

Re: Loan Nos. 1568 and 1602

Dear Mr. Fortner:

Reference is made to the subject loans which were consummated with your company under Loan Agreements dated October 28, 1960, and August 2, 1961, respectively, and which are evidenced by the following notes with outstanding balances and which are secured by the following mortgages:

Loan No. 1568

1. Land Note No. 2 dated October 28, 1960, maturing December 31, 1962.
2. Construction Note No. 1 dated October 28, 1960 which note, as extended, matured June 1, 1962.
3. Construction Note No. 2 dated October 28, 1960, maturing December 31, 1962.
4. Mortgage Deed dated October 28, 1960, securing the aforementioned notes.

Loan No. 1602

1. Land note dated August 2, 1961, maturing December 31, 1962.
2. Collateral Note dated August 2, 1961, maturing December 31, 1962.
3. Mortgage Deed dated August 2, 1961, securing the aforementioned notes.

In view of your failure to pay the outstanding balance on Construction Note No. 1 on or before maturity and in view of your further failure to pay interest on the Land

Request for Admissions

Notes evidencing both loans as required under the provisions of the Notes, Mortgages, and Loan Agreements, the amounts outstanding under all Notes evidencing your loans, together with the interest accrued thereon, are hereby declared to be due and payable pursuant to the provisions of said Notes, Mortgages, and Loan Agreements and demand for payment thereof is made herewith.

There is set forth below the outstanding principal balance due on all notes, the interest accrued thereon through July 12, 1962, and the daily interest accural rate:

Note	Loan	Principal Outstanding	Interest accrued through 7/12/62	Daily Interest Accrual
Land #2	1568	$183,157.60	$2,520.39	$30.53
Construction #1	1568	32,652.00	1,053.60	5.44
Construction #2	1568	82,435.45	2,902.76	12.59
Land	1602	52,400.00	681.20	8.73
Collateral	1602	2,950.00		

It will be appreciated if you will promptly remit to this office the above amounts in full payment of your obligations in order to avoid the necessity of placing this matter in the hands of our attorney for collection.

Very truly yours,

(s) W. L. Rollins
Assistant General Manager

WLR/df

CC: Mr. A. F. Reutlinger
Middleton, Seelbach, Wolford, Willis & Cochran
501 South Second Street
Louisville, Kentucky
Messrs. R. C. Dyas
D. H. Boyd
H. R. Black
J. C. Bird

RESPONSE TO REQUEST FOR ADMISSIONS.

Plaintiff, Fortner Enterprises, Inc., for its Response to the Request for Admissions served upon it be U. S. Steel Homes Credit Corporation, states as follows:

1. Admitted.

2. Plaintiff does not have records which show the dates and amounts as set forth in Paragraphs 2 and 3 of the Request for Admissions. Plaintiff has compared the figures set forth in Paragraph 2 with those appearing in Paragraph 3 and finds that the balance of those two sets of figures is in accord with the balance appearing on the books of Fortner Enterprises, Inc. Plaintiff denies owing said defendant any sum of money on said "Land Note Number 2, 1960" at this time, however, due to the illegal conduct of the defendants as set forth in plaintiff's Complaint and Reply to Counterclaim filed herein.

3. See response to Paragraph 2 of the Request for Admissions, supra.

4. Admitted.

5. Plaintiff does not have records which show the dates and amounts as set forth in Paragraphs 5, 6, 8 and 9 of the Request for Admissions. Plaintiff did not segregate on its books and records sums received and sums paid back under "Construction Note Number 1, 1960" and "Construction Note Number 2, 1960." Plaintiff has compared the balance of the sums set forth by U. S. Steel Homes Credit Corporation in Paragraphs 5, 6, 8 and 9 with the balance appearing on the books and records of Fortner Enterprises, Inc., and finds said balance to be substantially correct. Plaintiff denies owing said defendant any sum of money on said "Construction Note Number 1, 1960" and "Construction Note Number 2, 1960" at this time, how-

ever, due to the illegal conduct of the defendants as set forth in plaintiff's Complaint and Reply to Counterclaim filed herein.

6. See response to Paragraph 5 of the Request for Admissions, supra.

7. Admitted.

8. See response to Paragraph 5 of the Request for Admissions, supra.

9. See response to Paragraph 5 of the Request for Admissions, supra.

10. Admitted.

11. Plaintiff does not have records which show the dates and amounts as set forth in Paragraphs 11 and 12 of the Request for Admissions. Plaintiff has compared the figures set forth in Paragraph 11 with those appearing in Paragraph 12 and finds that the balance of those two sets of figures is in accord with the balance appearing on the books of Fortner Enterprises, Inc. Plaintiff denies owing said defendant any sum of money on said "Land Note, 1961" at this time, however, due to the illegal conduct of the defendants as set forth in plaintiff's Complaint and Reply to Counterclaim filed herein.

12. See response to Paragraph 11 of the Request for Admissions, supra.

13. Admitted.

14. Plaintiff admits that defendant, U. S. Steel Homes Credit Corporation, advanced to it $2,950.00 on or about August 2, 1961, but denies owing said defendant any sum of money on said "Collateral Note, 1961" at this time, however, due to the illegal conduct of the defendants as set forth in plaintiff's Complaint and Reply to Counterclaim filed herein.

15. Admitted.

Response to Request for Admissions

The foregoing Response to Request for Admissions is correct to the best of my information and belief.

(s) Kenneth L. Anderson
Woodward, Hobson & Fulton
1805 Kentucky Home Life Bldg.
Louisville 2, Kentucky
Attorneys for Plaintiff

Subscribed and sworn to before me by Kenneth L. Anderson, this 7th day of November, 1962.

My commission expires December 6, 1965.

Wayne Sperzel
Notary Public, Jefferson County, Kentucky

* * * * * * *

ANSWER TO INTERROGATORIES.

For its answers to the Interrogatories served by the defendants on October 24, 1962, plaintiff states as follows:

1. Plaintiff has not searched the title to the property which is the subject of the amended counterclaim of U. S. Steel Homes Credit Corporation and therefore does not and did not have sufficient information to unequivocally admit or deny the allegation of Paragraph 4 of the amended counterclaim of U. S. Steel Homes Credit Corporation. Plaintiff, therefore, has no knowledge of any such liens since it has not conducted a title search to determine whether or not there are any liens superior to the lien of U. S. Steel Homes Credit Corporation on the property in question.

2. Plaintiff has not searched the title to the property which is the subject of the amended counterclaim of U. S. Steel Homes Credit Corporation and therefore does not and did not have sufficient information to unequivocally admit or deny the allegation of Paragraph 10 of the

amended counterclaim of U. S. Steel Homes Credit Corporation. Plaintiff, therefore, has no knowledge of any such liens since it has not conducted a title search to determine whether or not there are any liens superior to the lien of U. S. Steel Homes Credit Corporation on the property in question.

Woodward, Hobson & Fulton
/s/ Kenneth L. Anderson
1805 Kentucky Home Life Bldg.
Louisville, Kentucky 40202
Attorneys for Plaintiff

Subscribed and sworn to before me by Kenneth L. Anderson this 2nd day of November, 1962.

My commission expires August 11, 1964.

Violet R. McClure
Notary Public, Jefferson County, Kentucky

* * * * * * *

AFFIDAVIT.

1. Affiant, after being duly sworn, states that his name is W. L. Rollins, that he is now, and for over five years immediately prior to the date of this affidavit has been, the Assistant General Manager of U. S. Steel Homes Credit Corporation and that he is the Company's Chief Executive Officer permanently assigned to the Company's office at 322 Pearl Street, New Albany, Indiana.

2. Affiant states that all financial records and accounts concerning Fortner Enterprises, Inc., are kept in the U. S. Steel Homes Credit Corporation's office aforesaid, under his direct control and supervision.

3. Affiant states that he has examined in detail the accounting of funds advanced and funds repaid or credited

against certain notes executed by Fortner Enterprises, Inc., which have heretofore been identified herein as Land Note Number 2, 1960, Construction Note Number 1, 1960, Construction Note Number 2, 1960, Land Note, 1961 and Collateral Note, 1961 as set forth in numerical Paragraphs 2, 3, 5, 6, 8, 9, 11, 12 and 14 of a Request for Admissions propounded on behalf of U. S. Steel Homes Credit Corporation and that such accounting is true, complete and accurate to the date said Request for Admissions was served on the plaintiff's attorneys, except that the entry under date of January 23, 1961 relating to funds advanced under Construction Note Number 1, 1960 shown as $3,699.85 should be corrected to $3,699.35.

4. Affiant states that since the date of such service of said Request for Admissions, certain other transactions have taken place between the plaintiff and the defendant U. S. Steel Homes Credit Corporation, some of which are reflected in the pleadings herein and some of which are not, but all of which were payments by plaintiff Fortner Enterprises, Inc., on some of the obligations mentioned above. Affiant states that specifically the following has taken place.

(a) On the dates and in the amounts set opposite thereto, plaintiff has paid U. S. Steel Homes Credit Corporation on the obligation created by Land Note Number 2, 1960, by way of principal, the following:

February 19, 1963	$2,200.
April 5, 1963	$2,200.
May 22, 1963	$2,200.

(b) On the dates and in the amounts set opposite thereto, plaintiff has paid U. S. Steel Homes Credit Corporation on the obligation created by Construction Note Number 1, 1960, by way of principal, the following:

February 19, 1963	$8,244.00
May 22, 1963	$8,914.50

(c) On the date and in the amount set opposite thereto, plaintiff has paid U. S. Steel Homes Credit Corporation on the obligation created by Construction Note Number 2, 1960, by way of principal, the following:

April 5, 1963	$8,194.50

5. Affiant states that he is thoroughly familiar with accounting, computation of interest and like matters and that the arithmetical computations, set forth in the next succeeding paragraph were made under his supervision and are true and correct.

6. Affiant states that it has been represented to him plaintiff, Fortner Enterprises, Inc., has admitted the execution, delivery and content of the several notes mentioned above and the mortgages securing same and that it has been further represented to him that plaintiff has admitted the receipt of a notice dated July 12, 1962, which in part declared that U. S. Steel Homes Credit Corporation exercised its right to precipitate the notes and obligations mentioned herein as of that date. Based on the foregoing representations, certain interim partial interest payments reflected on the plaintiff's accounts mentioned above, the rate of interest as set forth in the several obligations mentioned above (or by law) and the accounting of the transactions as set forth in the said Request for Admissions and this affidavit, affiant states that the correct, true and accurate status of the several obligations is as follows:

(a) Land Note Number 2, 1960. As of August 31, 1963, the principal balance was $158,957.60, with accrued interest to and including that date of $14,014.12 and a daily accrual of interest after that date of $26.49.

(b) Construction Note Number 1, 1960. As of August 31, 1963, the principal balance was $8,244.00, with accrued interest to and including that date of $857.85 and a daily accrual of interest after that date of $1.37.

(c) Construction Note Number 2, 1960. As of August 31, 1963, the principal balance was $33,345.00, with accrued interest to and including that date of $3,105.46 and a daily accrual of interest after that date of $5.55.

(d) Land Note, 1961. As of August 31, 1963, the principal balance was $50,200.00, with accrued interest to and including that date of $4,176.55 and a daily accrual of interest after that date of $8.37.

(e) Collateral Note, 1961. As of August 31, 1963, the principal balance was $2,950.00 with accrued interest to and including that date of $204.50 and a daily accrual of interest after that date of $.49.

7. Affiant states that he is aware that the original Counterclaim herein, insofar as it purports to claim a lien on certain property in Jefferson County, Kentucky, has been twice amended by reason of payments made by plaintiff since such was filed of record. Affiant states, in addition to the property on which liens were released by amendments to the Counterclaim, because of additional payments made as disclosed in this affidavit, U. S. Steel Homes Credit Corporation is no longer claiming a lien on Lots numbered 185 and 192, Section 1-D, Golden Meadows, a part of Parcel 6 described in Paragraph 3 of the original Counterclaim.

/s/ W. L. Rollins

Subscribed and sworn to before me by W. L. Rollins this day of August, 1963.

My Commission expires

Notary Public, Floyd County, Indiana

AFFIDAVIT.

Affiant, after being duly sworn, states that his name is Albert F. Reutlinger, that he is the attorney for U. S. Steel Homes Credit Corporation herein and that the following facts are true.

Heretofore he has requested the Louisville Title Insurance Company to make a title examination of all of the real estate described in the form of judgment tendered with U. S. Steel Homes Credit Corporation's motion for a summary judgment, that said Title Company in a written report to him has informed him there are no liens or encumbrances on said real property, except the mortgages involved in the within action, 1962 and 1963 State, County and School taxes and all taxes thereafter, easements and restrictions of record and applicable zoning laws.

/s/ Albert F. Reutlinger

Subscribed and sworn to before me by Albert F. Reutlinger, this 10th day of December, 1963.

My commission expires

Notary Public, Jefferson County, Kentucky

I certify that the above affidavit, together with all attachments was on the 10th day of December, 1963 delivered by me to the office of Kenneth L. Anderson, 1805 Kentucky Home Life Building, Louisville, Kentucky, and to the office of A. Scott Hamilton, Kentucky Home Life Building, Louisville, Kentucky, Attorneys for the Plaintiff.

/s/ Albert F. Reutlinger

ORDER FILING ASSIGNMENT OF BID.

On motion of Jack E. Mudd, Commissioner, and the Court being sufficiently advised:

IT IS ORDERED that the Assignment of the Bid made by Robert F. Simmons at the Judicial sale held in the above styled action to Kenilworth Investment Co. Inc., be filed herein and made a part of this record.

/s/ Henry L. Brooks
Judge

* * * * * * * *

MOTION AND ORDER.

Comes the purchaser, by counsel, and files herein on assignment of his bid as accepted by KENILWORTH INVESTMENT COMPANY, INC. and moves the court for the entry of the order confirming sale, taking credit and ordering deeds as hereinafter set forth.

/s/ Armer H. Mahan
Attorney for Purchaser

Robert F. Simmons and his Assignee
Kenilworth Investment Company, Inc.

ORDER

On motion by counsel, and it appearing that the report of sale held on March 11, 1964, has laid over in excess of ten days without exception being filed thereto, and assignment of bid having been tendered;

IT IS ORDERED AND ADJUDGED:

(1) The report of sale held on March 11, 1964, be and is hereby confirmed.

(2) The assignment of the bid of Robert F. Simmons to Kenilworth Investment Company, Inc. be and is hereby

approved and the term "purchaser" as used hereinafter is referred to the assignee, Kenilworth Investment Company, Inc.

(3) The purchaser be given credit for the amounts hereinafter set forth together with execution of bond in accordance with the term of sale.

(A)	Bid		35,200.00
	(Paragraph 1 of the sale bill attached to the report of sale.)		
	Deposit	3,520.00	
	Federal Tax Stamps	39.05	
		3,559.05	
	Interest on balance of sale price from March 11, 1964, to April 15, 1964 ($31,640.95 at 6% per annum)		168.77
	Balance bid to J. E. Mudd, Commissioner, in full with interest from March 11, 1964	31,809.72	
	TOTAL	35,368.77	35,368.77
(B)	Bid		129,000.00
	(Paragraph 2 of the sale bill attached to the report of sale.)		
	Deposit	12,900.00	
	Federal Tax Stamps	141.90	
		13,041.90	
	Interest on 20% of sale price from March 11, 1964, to April 15, 1964 ($25,658.10 at 6% per annum)		136.86
	20% of sale price paid to J. E. Mudd, Commissioner	25,800.00	

Balance in full of purchase price of Group 8 of Paragraph 2.....	7,000.00	
Bond, with interest from March 11, 1964, with surety thereon, payable to J. E. Mudd, Commissioner, for balance due 18 months from date of deed...	83,294.96	
TOTAL.....	129,136.86	129,136.86

(4) It appearing to the court that the purchaser, Kenilworth Investment Company, Inc., having complied with the terms of sale, it is hereby ordered that J. E. Mudd, Commissioner, execute the following deeds conveying to Kenilworth Investment Company, Inc., purchaser, the property described therein in accordance with the judgment heretofore rendered herein subject to the conditions set forth in the sale bill attached to the report of sale:

(a) Deed to Kenilworth Investment Company, Inc., in fee simple, to that property described in Paragraph 1 of the sale bill attached to the report of sale.

(b) Deed to Kenilworth Investment Company, Inc., in fee simple, to that property described in Group 8 of Paragraph 2 of the sale bill attached to the report of sale.

(c) Deed to Kenilworth Investment Company, Inc., in fee simple, the remaining property, comprising Groups 1 through 7, described in Paragraph 2 of the sale bill attached to the report of sale and in which deed a lien will be retained to secure the payment of the bond referred to in Paragraph 3 of this order; said deed to further provide for the privilege granted to the purchaser of securing release of said lien on any of the individual lots comprising Groups 1 through 7 of Paragraph 2, as described in the sale bill attached to

the report of sale, by paying, with interest, the pro-rata portion of the purchase price of which the lot or lots to be released is a part.

The aforesaid deeds shall convey the property described therein in fee simple and free and clear of all liens and encumbrances except, state, county and school taxes payable in the years 1962, 1963 and 1964 and all taxes thereafter, and except, as provided above, for lien securing payment of bond for balance of purchase price.

It appearing that the herein order approving assignment of bid, confirming sale, taking credit for monies paid to J. E. Mudd, Commissioner, ordering deeds and tendering bond for balance of purchase price have been approved by J. E. Mudd, Commissioner of this court, the same is hereby ordered filed.

/s/ Henry L. Brooks
Judge, United States District Court for the
Western District of Kentucky at Louisville

Entered this day of April 18, 1964.

A Copy: Attest
Martin R. Glenn, Clerk
By J. Allen
Deputy Clerk

• • • • • • • •

NOTICE.

TO: Mr. A. Scott Hamilton, Jr.
1015 Kentucky Home Life Building
Louisville, Kentucky 40202

TO: Mr. Kenneth Anderson
1805 Kentucky Home Life Building
Louisville, Kentucky 40202
Attorneys for Plaintiff

TO: Albert L. Reutlinger
501 South Second Street
Louisville, Kentucky 40202
Attorney for Defendant

TO: Mr. Jack E. Mudd, Commissioner
601 Republic Building
Louisville, Kentucky 40202

You will please take notice that on Friday, Mav 12, 1964, at 3:00 P. M., in the Court of the Honorable Roy M. Shelbourne, the attached Motion and Order will be submitted to the Court for signing and entry.

CERTIFICATION

I certify that a copy of the attached Notice was, this 9th day of June, 1964, delivered to the persons at the addresses listed above.

BURGESS & ROSE, ATTORNEYS
/s/ J. E. Rose
429 West Market Street
Louisville, Kentucky 40202
JU 3-0261

• • • • • • •

MOTION AND ORDER.

Comes the purchaser, by counsel, and moves the court for the entry of the order confirming sale, taking credit and ordering deed as hereinafter set forth.

BURGESS AND ROSE
/s/ J. E. Rose
Attorneys for Purchaser
Richard K. Fenley

ORDER

On motion by counsel, and it appearing that the report of sale held on March 11, 1964, has laid over in excess of ten days without exception being filed thereto;

IT IS ORDERED AND ADJUDGED:

(1) The report of sale held on March 11, 1964, be and is hereby confirmed.

(2) The purchaser be given credit for the amounts hereinafter set forth together with execution of bond in accordance with the term of sale.

Bid		$42,500.00
Deposit	$4,250.00	
Federal Stamps	46.75	
Interest on 20% of Sale Price from March 11, 1964 to June 10, 1964 ($8,453.25 at 6% per annum)		126.80
20% of sale price paid to J. E. Mudd, Commissioner together with interest as stated above	8,626.80	

Bond, with interest from March 11, 1964, with surety thereon, payable to J. E. Mudd, Commissioner, for balance due 18 months from date of deed....	29,703.25	
TOTAL.....	$42,626.80	$42,626.80

It appearing to the Court that the purchaser, Richard K. Finley Corporation, having complied with the terms of Sale, it is hereby ordered that Jack E. Mudd, Commissioner, execute the following Deed conveying to Richard K. Finley Corporation, purchaser, the property described therein in accordance with the Judgment heretofore rendered herein subject to the condition set forth in the Sale Bill attached to the Report of Sale:

Deed to Richard K. Finley Corporation, a Kentucky Corporation, in fee simple, to that property described in Groups 1, 2 and 3 of paragraph 3 of the Sale Bill attached to Report of Sale; the description of Lots 332, 333 and 334 as set out in Group 2 above to be corrected to read Lots 332, 333 and 334, Revised Plan of GOLDEN MEADOWS SECTION 2-B-2, Plat and Subdivision Book , Page , recorded in the Office of the Clerk of the County Court of Jefferson County, Kentucky, and in which deed a lien will be retained to secure the payment of the bond referred to in Paragraph 2 of this Order; said deed to further provide for the privilege granted to the purchaser of security release of said lien on any of the individual lots comprising Groups 1, 2 and 3, as described in the sale bill attached to the report of sale including Lots 332, 333 and 334 correctly described above by paying, with in-

terest, the pro-rata portion of the purchase price of which the lot or lots to be released is a part.

The aforesaid Deed shall convey the property described therein in fee simple and free and clear of all liens and encumbrances, except, State, County and School Taxes payable in the years 1962, 1963 and 1964 and all taxes thereafter, and except, as provided above, for lien securing payment of bond for balance of purchase price.

It appearing that the herein order confirming sale, taking credit for monies paid to J. E. Mudd, Commissioner, ordering deed and tendering bond for balance of purchase price have been approved by J. E. Mudd, Commissioner of this court, the same is hereby ordered filed.

/s/ Roy M. Shelbourne
Judge, United States District Court
for the Western District of Kentucky
at Louisville

Entered this 23rd day of , 1964.

* * * * * * *

Copyright 1957, United States Steel Corporation

GOF 8 1-9
Rev. 6-58

UNITED STATES STEEL HOMES
(USS) Division of
United States Steel Corporation

For USSH Use Only
Dealer No. 944
Dated 10/31/60

DEALER FRANCHISE

United States Steel Homes Division, United States Steel Corporation, of Pittsburgh, Pennsylvania, herein called "Company."

and

Fortner Enterprises, Inc.
Proposed Dealership Name

4123 South Third Street
Street

Louisville, Kentucky
City State

Check One:
☐ Individual
☐ Partnership
☒ Corporation

Jefferson EM 8-1676 WO 9-7401 Kentucky
County Day Phone Night Phone State of Incorporation

herein called "Dealer", hereby agree as follows:

1. Dealer submits to Company herewith:

(a) Current Financial Statement of Dealership and if appropriate, of the principals, and/or any affiliated or subsidiary organizations,

2. Company grants to Dealer a non-exclusive franchise, on the conditions set forth below, to purchase products described in Company's Residential Product Manual, here-

in called "Company Products", for use in erecting residential structures within the following territory:

Golden Meadows Subdivision and an area within a five mile radius thereof.

3. Dealer shall furnish the necessary facilities and personnel, shall use Dealer's best efforts to promote, sell, and service such structures within such territory, and shall incorporate and use in their erection Company Products in accordance with Company's plans and specifications. Dealer shall use recognized accounting methods and shall furnish to Company such financial and other information concerning Dealer's operations hereunder as Company may from time to time reasonably request.

4. Company will make available to Dealer for purchase at Company's prices in effect at time of shipment, such Company Products as are then being offered for sale by Company in that section of the country in which Dealer's territory is located, provided that all such purchases shall be made on Company's Conditions of Sale, as set forth in its applicable purchase order forms then in effect, and Company will use its best efforts, in the absence of excusable delays, to furnish said Company Products to Dealer. Dealer shall make such arrangements for payment as Company shall from time to time require. Company reserves the right to make improvements or other changes in its Company Products at any time and without notice to Dealer, and Company cannot guarantee that Company Products shipped will, in any particular, conform to Company's advertising or descriptive material or models issued or in circulation.

5. Company shall indemnify Dealer for Damages recovered by a third person in legal proceedings for infringement of U. S. Letters Patent by products manufac-

tured by Company and furnished hereunder, provided that Dealer promptly notifies Company of the claimed infringement, permits Company to assume the defense thereof if it so elects, and cooperates with Company in such defense.

6. Dealer shall not use any distinctive portion of Company's name or any trade-mark or trade name adopted by Company in the name under which Dealer conducts any business, except as authorized by Company in dealing in and advertising Company Products. Dealer shall not contest the validity of any copyright, trade-mark, trade name or patent owned by or licensed to Company, or contest Company's right to use exclusively any trade-mark or trade name at any time adopted by Company.

7. Dealer is an independent contractor and not an agent of Company. Dealer shall not purport to act as Company's agent or commit Company in any manner whatsoever.

8. (a) Dealer may terminate this Agreement at any time by written notice to Company.

(b) Company may terminate this Agreement by written notice to Dealer:

(1) at any time by giving not less than 6 months' advance notice to Dealer; or

(2) upon 30 days' advance notice to Dealer after any 12 consecutive calendar months during which Dealer fails to purchase from Company a minimum of $100,000.00 worth of Company Products; or

(3) at any time after 6 consecutive calendar months during which Dealer has not accepted and paid for one complete Home Package Shipment; or

(4) at any time if Dealer assigns this Agreement without Company's written consent; or

(5) after default by Dealer in the performance of any provision of this Agreement and Dealer's failure to

remedy such default within 30 days following written notice to Dealer by Company of such default.

(c) Principals in proposed dealership: (List principal parties; if a corporation, list officers; if a partnership, list all partners.)

Name	Position	Age
(1) A. B. Fortner, Jr.	President	45
(2) Ruth L. Fortner	Vice President	45
(3) Edna Herberman	Secretary	55
(4)		

If any such person shall withdraw from such position without written consent of Company, Company may terminate this Agreement at any time thereafter upon 30 days written notice to Dealer.

9. Termination of this Agreement cancels all unfilled orders for Company Products, but such termination shall not be waived if Company thereafter ships an order at Dealer's request to avoid imposing hardship on one of Dealer's customers. Termination of this Agreement shall not release Dealer from his obligation to pay moneys due or to become due to Company or to complete any other unfilled obligation under this or any other contract. Upon termination, Dealer will immediately cease advertising Company Products and using Company's name, trademarks, trade names, and advertising and promotional material in any manner whatsoever.

10. This Agreement is the sole and entire dealer franchise agreement between the parties, superseding any and all others. No modification of this Agreement shall be binding unless made in writing and signed by Dealer and Company. Any notice required to be given in writing by either party hereunder shall be delivered by deposit in the registered or certified mail, addressed to the last known busi-

ness address of the other party. This Agreement and any modification thereof and any written notice or consent required to be given hereunder by Company shall not bind Company unless signed by a Company officer.

If Dealer is a Corporation, President or Vice President must sign. If a Partnership, all partners must sign. If a Sole Proprietorship, the proprietor must sign. Indicate title of each signer.

Proposed Dealership Name—Fortner Enterprises, Inc.

By A. B. Fortner, Jr.
Title—President
By
Title
By
Title
Dealer's General Manager will be: A. B. Fortner, Jr.

DEALER: DO NOT WRITE BELOW THIS LINE

Execution of Dealer Franchise by Company is recommended.

Paul B. Grayson
Sales Representative
H. R. Black
Sales Manager
W. L. Lieber, Jr.
Treasury Department

Upon execution below, this Dealer Franchise becomes binding upon Company:

UNITED STATES STEEL HOMES DIVISION
By
D. H. Boyd
President

• • • • • • • •

AMENDED ANSWER.

The defendants, and each of them, for amendment to their answers to the complaint and amended complaint, by reference adopt all of the allegations found in their answers to the complaint and amended complaint and further, affirmatively state:

Fourth Defense

1. With regard to the matters alleged in the complaint and amended complaint, particularly (but without limiting the generality of this allegation) the contract dated October 28, 1960 referred to in the complaint and the contract dated August 2, 1961 referred to in the amended complaint, the plaintiff was in pari delicto and for this reason is barred from any recovery herein.

WHEREFORE, the defendants and each of them, pray the complaint and the amended complaint against them be dismissed, for their costs and all other relief.

(s) Albert F. Reutlinger
Attorney for Defendants
501 South Second Street
Louisville, Kentucky 40202
584-1135

* * * * * * *

NOTICE OF APPEAL.

Notice is hereby given that Fortner Enterprises, Inc., plaintiff, above named, hereby appeals to the United States Court of Appeals for the Sixth Circuit, Cincinnati, Ohio, from the Judgment entered in this action bearing No. 4392-A on the 15th day of January, 1964, and from the Final Judgment entered in this action bearing No. 4392 entered on September 7, 1966 and the Final Judgment en-

tered in this action bearing No. 4392 on September 8, 1966 and from the Order Overruling Plaintiff's Motion to Set Aside and Reconsider the Motion for Summary Judgment bearing No. 4392 entered on October 5, 1966.

(s) Kenneth L. Anderson
Woodward, Hobson & Fulton
1805 Kentucky Home Life Building
Louisville, Kentucky

(s) A. Scott Hamilton, Jr.
Hamilton, Hopson & Hamilton
310 W. Liberty Street
Louisville, Kentucky
Counsel for Plaintiff

* * * * * * *

UNITED STATES COURT OF APPEALS

For the Sixth Circuit

I, Carl W. Reuss, Clerk of the United States Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of Appendix for Defendants-Appellees in the case of Fortner Enterprises Inc. v. United States Steel Corp. No. 17546, as the same remains upon the files and records of said United States Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 28th day of May, A.D. 1968.

/s/ Carl W. Reuss
Clerk of the United States Court of Appeals
for the Sixth Circuit.

(Seal)

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. _____

FORTNER ENTERPRISES, INC., - - *Petitioner,*

v.

UNITED STATES STEEL CORPORATION,
U. S. STEEL HOMES CREDIT CORPORATION, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Petitioner, Fortner Enterprises, Inc., prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above-entitled case on April 26, 1968.

CITATIONS TO OPINIONS BELOW.

The Memorandum Opinion-Judgment of the District Court is unreported (R* 309a) and is printed in Appendix "A" hereto, *infra,* App. A 33-46. The judgment of the District Court is unreported (R 322a), and

*Reference to pages of the record certified to this Court by the Clerk, United States Court of Appeals for the Sixth Circuit, will be to the two volumes of Appendix of Petitioner filed in said Court and will be designated by "R" followed by the appropriate page numbers in said Appendix.

is printed in full in Appendix "A" hereto, *infra,* App. A 46. There was no opinion of the Circuit Court of Appeals for the Sixth Circuit. An Order was entered by the Court on April 26, 1968 affirming the judgment of the District Court and said Order appears in the certified Record on Petition for Writ of Certiorari and is printed in Appendix "B" hereto, *infra,* App. B 47. Said Order is not reported.

JURISDICTION.

The Judgment of the Circuit Court of Appeals was entered on April 26, 1968, App. "B," *infra,* App. B 47. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

QUESTIONS PRESENTED.

I. May a Federal Court in an antitrust suit charging a contract, combination and conspiracy to restrain commerce and an illegal tie-in agreement in violation of Section 1 of the Sherman Act and a conspiracy to monopolize in violation of Section 2 of the Sherman Act dismiss such a suit through Summary Judgment procedures when ample evidence was in the record to support all elements of both charges as set forth in the established cases?

II. When large and wealthy companies such as United States Steel Corporation and its credit subsidiary U. S. Steel Homes Credit Corporation lend money to borrower under unique and unusual terms not available elsewhere to obtain mortgages and loan agreements

which require borrower (Fortner Enterprises, Inc.) ". . . . to erect on each of said Lots . . . a prefabricated dwelling house manufactured by United States Steel Homes Division, United States Steel Corporation . . ." is there created an illegal tying agreement in violation of Section 1 of the Sherman Act?

III. Is a minimum of $678,000.00 of sales or obligations to purchase of a tied product a not insubstantial amount of interstate commerce to satisfy the second element of an illegal tie-in agreement and should the Federal Courts have applied a share of the market test to a case involving a tie-in agreement?

STATUTES INVOLVED.

The statutes involved are Sections 1 and 2 of the Sherman Antitrust Act, 15 U. S. C. 1 and 15 U. S. C. 2, and Sections 4 and 16 of the Clayton Act, 15 U. S. C. 15 and 15 U. S. C. 26. The foregoing are printed in Appendix "C," *infra,* App. C 48-50.

STATEMENT OF THE CASE.

1. The Facts.

Petitioner, Fortner Enterprises, Inc., was approached by Respondent United States Steel Corporation (hereinafter called "U. S. Steel"), in 1959 seeking to sell Petitioner prefabricated homes manufactured by it and representing that very attractive financing for a project was available through a wholly owned subsidiary of U. S. Steel, the Respondent U. S. Steel Homes Credit Corporation (hereinafter called "Credit

Corporation") (R. 290a). The homes were not particularly attractive to Petitioner but the representatives of Credit Corporation made very attractive offers of financing until they arrived at the point that they offered to provide maximum financing for land acquisition and development (R 290a). Coupled with the offer of financing was a condition that Petitioner only purchase and erect on the lots in Petitioner's proposed subdivision homes manufactured and sold by U. S. Steel (R. 290a). This offer of financing was so unusual and unique insofar as Petitioner was concerned that through economic necessity it was accepted (R 290a). Not only was this type of financing unique to Petitioner, it was unique in financing circles generally in the Louisville, Kentucky area in 1960 when it was made and accepted according to the affidavit of one of the leading mortgage lenders in the Louisville area (R 294a, 295a). Such loans were not available under the terms made at that time from any other source.

Certain written agreements were then made including a loan agreement signed on October 28, 1960 (R 24a, 291a), and mortgages were signed by Petitioner (R 39a-46a). The instruments were between Petitioner and Credit Corporation. U. S. Steel was not a *party* to them. But the loan agreement specifically required Petitioner to erect a prefabricated home manufactured by U. S. Steel on each lot in the subdivision (R 27a, 28a).

The financing was provided and the work was begun. Defects in and problems with the prefabricated houses appeared and multiplied. The problems with the homes

got so bad that in the latter part of 1961 or early in 1962, Petitioner requested Credit Corporation to relieve Petitioner of the restrictive portion of the loan agreement which required Petitioner to erect on each lot a U. S. Steel home (R. 26a), but this was refused (R 291a) and Petitioner was told it would have to continue with the U. S. Steel homes.

The problems with the houses continued to get worse and the subdivision of Petitioner had by then obtained a bad reputation. On May 31, 1962, representatives of Petitioner and both Respondents met and Respondents were again requested to allow Petitioner to build conventional homes so Credit Corporation could be paid but this was met with an adamant refusal (R 293a) and threats of foreclosure on the mortgages. Petitioner as of June 6, 1962 had kept its account current with Credit Corporation (R 428a, 429a), but the coercion of Respondents and their insistence on enforcement of the tying agreement resulted in the filing of this antitrust suit in July, 1962, and the cessation of payments.

The uncontradicted evidence in the record is that the Credit Corporation in this and many other instances was used as a "tool" by U. S. Steel to obtain sales of its home packages (R 763a, 764a, 362a-364a), in spite of the fact that the original intent in the formation of the Credit Corporation was not to use it as a means to force such sales (R 756a-759a).

All loans made by Credit Corporation to finance the acquisition and development of real estate have the tying agreement in them as was described in a part

of Credit Corporation's Answer to Interrogatory 17 (R 167a):

> "Loans made to finance the acquisition of subdivided real estate, or to finance the development of real estate as subdivisions, are made against mortgage security with provisions for partial releases of individual building lots upon satisfactory evidence that the lot has been improved with a residential structure utilizing products of United States Steel Homes Division, or upon satisfactory assurances that the lot is to be so improved."

The same provision also applies to loans made for house construction (R 167a, 168a).

The general purpose of Credit Corporation has been described by its Vice-President Dyas as (R 851a):

> "Well, the general purpose is to provide financial assistance to customers or dealers in which they apply for such assistance, and seem to be unable to obtain the same sort of assistance on reasonable terms from normal sources."

The President of the Credit Corporation has admitted that the loans to Petitioner were made to help U. S. Steel obtain a broader distribution in the Louisville market (R 839a), that the tie-in was used under the dictate of U. S. Steel (R 838a, 839a) and that it was Credit Corporation's intent so long as the loan agreements were in effect to require Petitioner to put U. S. Steel homes in Petitioner's subdivision (R. 840a).

The extent of the use of the Credit Corporation to force sales of homes packages to dealers is illustrated

by the statistics in the record. The Credit Corporation in 1960 made loans totalling $22,625,805 (R. 675a) to achieve sales of home packages worth $3,971,217.76 (R 183a, 676a, 677a). For 1961 loans of $19,342,612.00 were made to achieve sales of $2,823,383.50. In 1962 loans of $19,283,544.00 were made to achieve sales of $2,289,819.00. All of these loans with insignificant exceptions (R. 676a) were made with the restrictive tying agreement in the applicable loan agreements (R 167a).

The transaction with Petitioner involved loans or loan commitments in excess of $2,500,000.00 (R. 25a, 244a) and obligated Petitioner to purchase 219 house packages (R 24a, 243a) at a minimium price of $3,100.00 each (R 350a), so the tying agreement with Petitioner alone involved a minimum of $678,900.00 of purchases of prefabricated homes.

2. Proceedings Below.

This is a suit for damages and an injunction under Section 4 of the Clayton Act (15 U. S. C. 15) (App. C 49) and Section 16 of the Clayton Act (15 U. S. C. 26) (App. C 50).

The Complaint charging violation of Sections 1 and 2 of the Sherman Act was filed on July 19, 1962 (R 2a). Much discovery was had thereafter, principally by Petitioner, including interrogatories, numerous depositions and the production of numerous documents by Respondents. All of the pertinent material to Petitioner's cause appears in the two volume appendix in the Sixth Circuit record and is quite extensive.

Matters involving foreclosure by the Credit Corporation on Petitioner's property consumed much time of the parties.[1]

The antitrust suit was finally set down for trial on July 6, 1966, in the District Court for the Western District of Kentucky. On June 25, 1966, eleven days before the trial, Respondents filed their Motion for Summary Judgment (R 14a). On the morning the trial was to begin the Court elected to hear arguments on the Summary Judgment and decided that Summary Judgment would be granted. A request for "Findings of Fact and Conclusions of Law" was made to counsel for Respondents by the Court and this was tendered by Respondents on July 21, 1966 (R 15a, 297a-309a). Thereafter on September 7, 1966, the District Court filed his "Memorandum Opinion-Judgment Dismissing Complaint and Amended Complaint" (R 309a-322a; App. A 33-46) which is identical to the Respondents' tendered "Finding of Fact and Conclusions of Law" on the antitrust issues with insignificant exception. The Court's Memorandum Opinion was modified on October 5, 1966, ordering the Affidavits of Kenneth L. Anderson and Herman Miles

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[1]The District Court granted Respondent Credit Corporation foreclosure on its counterclaim and Petitioner's property was sold although Petitioner has strongly contended that the foreclosure Judgment (R 192a), was not final under Federal Rule of Civil Procedure 54(b) since there was no certificate of "no just cause for delay" and no express directions for entry of judgment contrary to said rule and *Sears, Roebuck & Co.* v. *Mackey*, 351 U. S. 427, 100 L. Ed. 1297, and *Cold Metal Process Co.* v. *United Eng. & F. Co.*, 351 U. S. 445, 100 L. Ed. 1311, and a mere order separating issues for trial (R 173a and 174a) does not make such order final, *Atkins Kroll (Guam) Ltd.* v. *Cabreras* (C. A. 9th, 1960), 277 F. 2d 922.

to be filed (R 348a). A separate Judgment was entered dismissing Petitioner's suit on September 8, 1966 (R 16a, 322a), and the Notice of Appeal was filed on October 6, 1966 (R 17a, 770a).

This cause was briefed by the parties and subsequently argued on December 5, 1967 before the Sixth Circuit Court of Appeals.

On April 26, 1968, the Sixth Circuit Court of Appeals without opinion entered an order affirming the District Court judgment based on the District Court's Memorandum Opinion (App. A 46). This Petition was then filed.

REASONS FOR GRANTING THE WRIT.

I. May a Federal Court in an antitrust suit charging a contract, combination and conspiracy to restrain commerce and an illegal tie-in agreement in violation of Section 1 of the Sherman Act and a conspiracy to monopolize in violation of Section 2 of the Sherman Act dismiss such a suit through Summary Judgment procedures when ample evidence was in the record to support all elements of the charges as set forth in the established cases?

The decision by the Sixth Circuit Court of Appeals to affirm the District Court's Opinion without giving the parties the benefit of an opinion significantly undermines the furtherance of antitrust enforcement by private litigation. There was a proper demand for jury trial in this case (R 56a), but the District Court took it upon himself to evaluate the evidence and dismiss Petitioner's suit on Respondents' Motion for Summary Judgment. The District Court actually

acted as a trier of facts and the Court of Appeals has countenanced this action by its affirmance. There are significant questions of law and fact which appear in the record which should have precluded a Summary Judgment first sought eleven days before trial, and after four years of preparation.

To illustrate the erroneous nature of the proceedings on the Summary Judgment in this case, you need merely look at the "Findings of Fact and Conclusions of Law" (R 297a-309a) tendered by Respondents at the request of the District Court to realize that the Court was acting as a trier of facts. The District Court adopted those "Findings of Fact and Conclusions of Law" verbatim on the antitrust issues and simply changed the title to "Memorandum Opinion-Judgment Dismissing Complaint and Amended Complaint" (R 309a-322a; App. A 33-46). This Opinion takes every *fact* most favorable to Respondents and uses those facts to support the dismissal and in the process ignores or brushes aside the evidence of the Petitioner. This is directly contrary to the principles laid down by this Court in *Poller* v. *Columbia Broadcasting System,* 368 U. S. 464, 7 L. Ed. 2d 458, 82 S. Ct. 486.

The issues presented in Petitioner's Complaint and evidence present serious questions of violations of Sections 1 and 2 of the Sherman Act. The Respondents were charged with ". . . a contract, combination and conspiracy in unreasonable restraint of and to monopolize . . . interstate trade and commerce in prefabricated houses and their component parts . . ."

(R 21a). The Complaint goes on to specifically allege a conspiracy and concert of action to use the financing power of the Respondent Credit Corporation as a means of forcing dealers such as and including Petitioner to purchase the prefabricated houses of Respondent U. S. Steel (R 21a). The Complaint goes on to allege threats of foreclosure on the mortgages on Petitioner's property held by the Credit Corporation if Petitioner did not abide by the terms of the loan agreement requiring it to only purchase and build on said property U. S. Steel prefabricated homes (R 22a).

The loan agreement in paragraph 2. b. specifically obligates Petitioner as borrower to ". . . erect on each of said Lots . . . a prefabricated dwelling house manufactured by United States Steel Homes Division, United States Steel Corporation" (R 26a).

Respondents have admitted over and over again that the Loan Agreements tied the purchase of the house packages to the lending of money for land purchase and development and the District Court throughout his opinion acknowledges that this was a tie-in contract.

What the District Court then proceeded to do was *evaluate* evidence and *misapply* the pertinent Supreme Court decision in finding as a matter of law no violation.

Throughout this case we have gained the impression from the District Court and the panel of judges who heard the oral arguments in the Sixth Circuit that we are attacking the use of financing or credit

as it is normally used in the economy. This we definitely are not doing. Selling to customers on credit at all levels of business is an essential foundation of our economic structure. What we are attacking is the unusual use of credit under unique terms not available elsewhere as bait to get a borrower to sign loan agreements and mortgages which require that a third company's product be purchased which has no contractual relationship with the lender or borrower and no relationship to the security given the lender with threats of foreclosure on the mortgages if the products of the third party are not purchased and used. The day to day normal credit transaction certainly does not involve the type situation of which we do complain.

A predominant feeling that has been expressed at the oral arguments before the District Court and before the Sixth Circuit by the respective judges is that money when offered to finance a project under unique and unusual terms which cannot be obtained elsewhere cannot be used as a tying device. The attitude or feeling seems to be that one cannot accept such money under such conditions and later complain that restrictions under which the money is taken violate the antitrust laws. While not expressed in such terms, this is merely another way of applying the *in pari delicto* doctrine. This inference that it was not quite right for Petitioner to file this suit permeates the District Court's memorandum Opinion (App. A 33-44) without it saying so directly.

Unfortunately we did not have at the District Court level or even in time for a Petition for Re-

hearing before the Sixth Circuit this Court's Opinion in *Perma Life Mufflers, Inc., et al.* v. *International Parts Corp., et al.*, —— U. S. ——, 36 Law Week 4571, handed down on June 10, 1968. In that case the franchise agreements between the plaintiffs and defendants imposed a number of restrictions including terms barring plaintiffs from purchasing from other sources of supply and tying the sale of mufflers to the sale of other products in the Midas line. The District Court gave Summary Judgment for the defendants and the Seventh Circuit Court of Appeals affirmed on the basis of the *in pari delicto* doctrine and on the basis that wholly controlled corporations cannot conspire, as was charged. This Court strongly disagreed and reversed.

In *Perma Life Mufflers, supra,* this Court analyzed some of the evidence in the record including the fact that plaintiffs had attempted to obtain relief from the full line forcing and tying restrictions concerning the higher priced Midas line and had been adamantly refused and holds that such evidence establishes that the *illegal scheme* was forced upon plaintiffs. This Court also holds that the separate corporate defendants by availing themselves of separate corporate identity could not save them from the conspiracy charge even though there was common ownership.

Petitioner is firmly convinced that the Sixth Circuit would have reversed if the *Perma Life Mufflers* case, *supra,* had been available since the facts are similar and this Court finds such similar scheme to be illegal and sends that case back for trial.

In the present case Petitioner, Fortner Enterprises, Inc., was offered by Credit Corporation unusual and unique financing for land purchase and development, which could not be obtained elsewhere (Affidavit of Fortner, R 29a; Affidavit of Horn, R 294a), to induce Petitioner to agree to buy the prefabricated house packages of U. S. Steel and erect them in Petitioner's subdivision. There is ample proof in the record that Respondents conspired to do this insofar as Petitioner was concerned as well as to all others who borrowed money from Credit Corporation and that this was a principal means U. S. Steel had of getting a captive market and thus eliminating its competition. The Respondents have not argued or pled that the restrictions were reasonably necessary to ensure repayment. What they do say is that the restrictions would be eliminated and the mortgages on Petitioners' property released if Petitioners would pay them off.[2] The District Court accepted this argument (R 314a; App. 37, 39). This is merely an extension of the *"in pari delicto"* argument. This is the same as any of the illegal tie-in cases decided by this Court. The contracts could be cancelled and the restrictions thereby lifted, but this Court has never accepted such an argument and it is clear in the *Perma Life Mufflers* case, *supra,* why this is so. See also *Simpson* v. *Union Oil Company,* 377 U. S. 13, 12 L. Ed. 2d 98, 84 S. Ct. 1051.

[2]This is not accurate since the mortgage (R 44a) requires Petitioner to perform each undertaking of the Loan Agreement and the Loan Agreement requires the erection of the U. S. Steel homes (R 26a).

In the present case when the burden of the restrictions became known, Petitioner, through its President A. B. Fortner (R 290a), also tried on at least two occasions to formally obtain relief from such restrictions and was adamantly refused, and told that there would be foreclosures if the houses of U. S. Steel weren't bought and built. The U. S. Steel product was defective (R 118a-128a, 290a-293a), in addition to being higher priced than that obtainable from other sources of supply (R 349a-353a).

Since the Sixth Circuit affirmed on the basis of the District Court's Memorandum Opinion (App. A 33-46), we must focus our attention on that opinion.

The District Court brushes aside the charge of conspiracy under Section 1 of the Sherman Act by stating "That the defendants did or did not conspire to achieve the tie-in contracts is of no consequence at this time" (R 314a; App. 39). The District Court apparently felt that the case depended solely on the legality or illegality of the tying agreement (R 315a; App. 40). This case should have been reversed out of hand on this point alone by the Court of Appeals.

We need only look at *United States* v. *General Motors Corporation*, 121 F. 2d 376, cert. denied, 314 U. S. 618, to find a case where a conspiracy to violate Section 1 of the Sherman Act was charged and upheld. In that case General Motors conspired with its wholly owned subsidiary G.M.A.C. to force the G.M.A.C. financing services upon dealers for the financing services upon dealers for the financing of the dealers' wholesale purchases and retail sales of General Motors

automobiles. In that case General Motors used its economic power over its dealers to force the G.M.A.C. financing upon them. In the present case the Credit Corporation has used its economic power in the form of loans not available elsewhere at all or under the terms offered to force the purchase of U. S. Steel homes on the borrowers. See also *United States* v. *Yellow Cab Company,* 332 U. S. 218, 91 L. Ed. 2010.

The District Court ignores completely the charge of conspiracy to monopolize under Section 2 of the Sherman Act. No mention of that claim is made anywhere in his opinion. The Petitioner has consistently argued this cause of action and never abandoned any part of same, yet this charge has never been understood. There is ample evidence in the record that the Respondents conspired to achieve an increased share of the prefabricated home business by means of their financing programs to the damage of Petitioner and others. The Credit Corporation was originally established to provide financing to dealer builders of U. S. Steel but it was understood at the time of formation in 1954 that it would be used as a means to force sales to them (R 756a). But this purpose was changed in 1958 (R 763a, 764a), when the Credit Corporation, under the direction of U. S. Steel's Finance Committee began to make loans to effectuate a minimum distribution of 1,800 house packages without conformity to conventional patterns of lending. This program was continued through the time Petitioner was signed up (R 764a-766a). U. S. Steel even guaranteed Credit

Corporation's losses in writing from such ventures (R 764a), and included Petitioner in the guarantee.

This conspiracy was not confined to Petitioner but the Court ignores the evidence of the extent of said conspiracy. The Vice-President of the Credit Corporation in his deposition admitted that all loan agreements with all dealers had the purchase of U. S. Steel homes tied to the loan (R 870a, 871a). The President of the Credit Corporation has admitted that the Credit Corporation made loans consistently to aid U. S. Steel in its sales program of homes and which loans were unusual when regular banking and financial principles are applied (R 832a). He has also admitted that he as President of the Credit Corporation made the decision to put the tie-in clause in the loan agreements with the knowledge of and under the direction of U. S. Steel (R 838a, 839a, 843a), the other alleged conspirator.

An excerpt from the U. S. Steel sales manual (R 381a, 382a), illustrates the special financing program as used by Respondents. It is even pointed out that the Credit Corporation turned down good loans when they couldn't produce sales because this would not accomplish the purpose of U. S. Steel. This closes (R 382a) with the statement "Financing is simply one of several tools that we (U. S. Steel) have available for securing more business."

The conspiracy to monopolize is further illustrated by the extensive nature and use of the loans to obtain sales. 68% of house package sales in 1960 involved loan agreements with the tie-in provision (R 676a,

677a). In 1960 the Credit Corporation made loans of over $22,000,000.00 to achieve sales which amounted to about $4,000,000.00. The same pattern is present for 1961 and 1962. In 1961, 70% of sales or about $2,900,000.00 were achieved as a result of such loan agreements involving loans of $19,300,000.00. In 1962, 75% of sales or about $2,300,000.00 of sales for the first nine months were achieved as a result of such loan agreements involving loans of $19,280,000.00 made during the first nine months. This is the exercise of naked economic power of itself, but the record contains more.

These loans were unique not only to Petitioner but to the other customers to whom they were presented. All of the loans made were not bankable loans (R 857a), which means that normal channels of funds were not available to such borrowers. The terms of the loans were most important to many of the borrowers including Petitioner. The Respondents according to their own admissions went far beyond any competition by making higher percentage loans in relation to equity at more advantageous rates to the borrower. For example, the U. S. Steel Sales Manual indicates that competition charged simple interest plus a 10% fee while the Credit Corporation charged simple interest plus ½ point fee (R 377a).

Empire Homes, a Louisville competitor of U. S. Steel, which priced its home packages lower than U. S. Steel to Petitioner (R 350a), did not have the economic circumstance to make such loans on such terms in 1960 (R 295a), and therefore was excluded from competition for Petitioner's business as were the

many suppliers of building materials which could have been used to build conventional homes.

The evidence of conspiracy to monopolize was surely one of fact for a jury under *United States* v. *Consolidated Laundries Corporation,* 291 F. 2d 563, 573 (2nd Cir. 1961), which holds that "intent" is an element of the offense and that an appreciable part of interstate commerce is the subject of the conspiracy. The Court holds at page 572 that $523,168.00 worth of business (1% of all such service) was substantial interstate commerce affected regardless of the percentage involved. See also *United States* v. *Yellow Cab Co.,* 332 U. S. 218, 225-226, 67 S. Ct. 1560, 1564, 91 L. Ed. 2010.

The cases also hold that a conspiracy to monopolize may be established without proof that the conspirators acquired the power to carry out the object of the conspiracy and without proof that monopolization was achieved. *American Tobacco Co.* v. *U. S.,* 328 U. S. 781, and *U. S.* v. *Griffith,* 334 U. S. 100.

The evidence of conspiracy ~~in~~ violations of Sections 1 and 2 of the Sherman Act and its effectuation is present in the record from the mouths of the Respondents and their documents. Yet the District Court passed by this claim and did not consider it. Can it be justice to dismiss Petitioner's claim as if it did not exist? Surely this Court cannot allow such procedures to exist in the lower courts. Surely this must present compelling grounds for sustaining the Petition for Certiorari.

II. When large and wealthy companies such as United States Steel Corporation and its credit subsidiary U. S. Steel Homes Credit Corporation lend money to borrower under unique and unusual terms not available elsewhere to obtain mortgages and loan agreements which require borrower (Fortner Enterprises, Inc.) ". . . to erect on each of said Lots . . . a prefabricated dwelling house manufactured by United States Steel Homes Division, United States Steel Corporation . . ." is there created an illegal tying agreement in violation of Section 1 of the Sherman Act?

We now turn to that portion of this case upon which the District Court did pass. We would repeat that the fact that the loan agreements contained a tie-in clause is admitted by Respondents and acknowledged by the District Court in his opinion. The District Court and Court of Appeals have failed to properly apply the controlling Supreme Court decisions to the facts in the record and this is a compelling reason for the granting of this Petition. The misapplication and intepretation of the law concerning tie-in cases must be rectified by this Court for uniform interpretation of the Antitrust laws and for justice to this Petitioner.

The basic law on tie-in violations is found in *International Salt Company* v. *United States,* 332 U. S. 392, 92 L. Ed. 20, where lessees of salt processing machinery were required by their leases to buy the salt used in the machinery from International Salt Company. $500,000.00 of salt per year was involved in the tie-in. This Court held such amount of commerce in the tied product not insignificant nor insubstantial and found

the leases *per se* violations of Section 1 of the Sherman Act as illegal tie-in devices.

Northern Pacific Railway Company v. *United States,* 356 U. S. 1, 2 L. Ed. 2d 545, then speaks of tie-in arrangements as follows at 2 L. Ed. 2d 550:

> "They are unreasonable in and of themselves whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a 'not insubstantial' amount of interstate commerce is affected."

Northern Pacific, supra, then given a very pertinent discussion of the *International Salt* case (2 L. Ed. 2d 552):

> "In our view International Salt Co. v. United States, 332 U. S. 392, 92 L. Ed. 20, 68 S. Ct. 12, which has been unqualifiedly approved by subsequent decisions, is ample authority for affirming the judgment below. In that case the defendant refused to lease its salt-dispensing machines unless the lessee also agreed to purchase all the salt it used in the machines from the defendant. It was established that the defendant had made about 900 leases under such conditions and that in the year in question it had sold about $500,000 worth of salt for used in the leased machines. On that basis we affirmed unanimously a summary judgment finding the defendant guilty of violating § 1 of the Sherman Act. The Court ruled that it was 'unreasonable, per se, to foreclose competitors from any substantial market' by tying arrangements. As

we later analyzed the decision, it was not established that equivalent machines were unobtainable, it was not indicated what proportion of the business of supplying such machines was controlled by defendant, and it was deemed irrelevant that there was no evidence as to the actual effect of the tying clauses upon competition.' Standard Oil Co. v. United States, 337 U. S. 293, 305, 93 L. Ed. 1371, 1381, 69 S. Ct. 1051.

"The defendant attempts to evade the force of International Salt on the ground that the tying product there was patented while here it is not. But we do not believe this distinction has, or should have, any significance. In arriving at its decision in International Salt the Court placed no reliance on the fact that a patent was involved nor did it give the slightest intimation that the outcome would have been any different if that had not been the case. If anything, the Court held the challenged tying arrangement unlawful despite the fact that the tying item was patented, not because of it. 'By contracting to close this market for sale against competition, International has engaged in a restraint of trade for which its patents afford no immunity from the antitrust laws.' '332 U. S., at 396. Nor have subsequent cases confined the rule of per se unreasonableness laid down in International Salt to situations involving patents. Cf. United States v. Griffith, 334 U. S. 100, 92 L. Ed. 1236, 68 S. Ct. 941; United States v. Paramount Pictures, Inc., 334 U. S. 131, 156, 92 L. Ed. 1260, 1291, 68 S. Ct. 915; Times-Picayune Publishing Co. v. United States, 345 U. S. 594, 79 L. Ed. 1277, 73 S. Ct. 872."

The District Court stops at this point and interpolates the language of the above cases to mean that there must be monopoly power or a high degree of economic control in the market over the tying product. But these cases speak only of "sufficient economic power" over the tying product to restrain competition in the tied product. And the later Supreme Court case of *United States* v. *Loew's Inc.*, 371 U. S. 38, 9 L. Ed. 2d 11, has further clarified the law on this point. In that case this Court held:

> "Market dominance—some power to control price and to exclude competition—is by no means the only test of whether the seller has the requisite economic power. Even absent a showing of market dominance, the crucial economic power may be inferred from the tying product's desirability to consumers or from uniqueness in its attributes."

On that same page, footnote 4 states in pertinent part:

> "Since the requisite economic power may be found on the basis of either uniqueness or consumer appeal, and since market dominance in the present context does not necessitate a domination of market power in the sense of Section 2 of the Sherman Act, it should seldom be necessary in a tie-in case to embark upon a full-scale factual inquiry into the scope of the relevant market for the tying product and into the corollary problem of the seller's percentage share in that market."

The District Court ignored the *Loew's* decision (R 317a, 318a), and the Petitioner's evidence on this

element. Petitioner's evidence was that the financing offered Petitioner by Credit Corporation was so unusual and unique that economic circumstances compelled the acceptance of the restraints in the loan agreements (Affidavit of A. B. Fortner, R 290a), and such financing under such terms was not available elsewhere at that time (Affidavit of Horn, R 294a). The President and Vice-President of the Credit Corporation admitted that their loans were to obtain business for U. S. Steel and were not loans which the borrowers could obtain from conventional sources (R 832a, 852a, 857a). Obviously this financing meets the test of the *Loew's* case, *supra,* and must be construed most favorably to Petitioner on a Motion for Summary Judgment. But what did the District Court say? He found as a matter of law (R 318a, App. A 41-42), that the uniqueness in terms was of no significance and that others "could" have lent money to Petitioner on the same terms. But there is not one scrap of evidence in the record to support that conclusion. The evidence was that money under such terms was *not* available elsewhere at that time! (R 290a-293a, 294a).

One of the key issues then is the holding that loans under unique and unusually favorable terms cannot be a tying element of an illegal tying agreement. The opinion (R 318a; App. A 42) recognizes that the financing was unique to Petitioner but holds that it must be generally unique and attractive in the market place to result in the requisite economic power. No authority is cited for this holding and it flies in the face of the *Loew's* decision, *supra,* which finds the requisite

economic power in the tying product's desirability to consumers or from uniqueness in its attributes, *United States* v. *Loew's, Inc.*, 371 U. S. 38, 45, 9 L. Ed. 2d 11, 18, and even more strongly in the Sixth Circuit's own decision in *Associated Press* v. *Taft-Ingalls Corporation*, 340 F. 2d 753, cert. denied 382 U. S. 320, where the A. P.'s Ohio wire service was found unique to Taft-Ingalls Corporation to the point that the requisite economic power was found. Clearly the Ohio wire service was not generally unique to all customers.

There was evidence in the record which would have at least raised a jury issue as to the general uniqueness of the special financing plans offered by the Credit Corporation. The Sales Manual described their loans as being on better terms than those of competitors.

Mr. Horn has testified that loans on such terms were not available to Petitioner or anyone else at the time they were made (R 294a). Again the District Court has merely accepted Respondents' facts and law and ignored Petitioner's evidence.

This decision and the Sixth Circuit's affirmance is contrary to the holding in *Trans-World Airlines, Inc.* v. *Hughes*, 332 F. 2d 602, 611 (1964), cert. dismissed 380 U. S. 248, 249, which holds that the pleading, which charged the defendant, Hughes Tool Company, with conditioning its financing to T. W. A. on T. W. A. only purchasing its airplanes from Hughes, on its face charged an illegal tying agreement under the Antitrust laws and stated a claim, thus establishing jurisdiction.

It is respectfully submitted that proper application of the applicable cases to the facts of record show that

there was sufficient evidence of economic power over the tying device to at least submit the case to a jury trial and that this Petition should be granted to clarify the law on this point and properly effectuate private enforcement of the Antitrust laws by private litigation.

III. Is a minimum of $678,000.00 of sales or obligations to purchase of a tied product a not insubstantial amount of interstate commerce to satisfy the second element of an illegal tie-in agreement and should the Federal Courts have applied a share of the market test to a case involving a tie-in agreement?

The District Court then goes into the second element of an illegal tying agreement beginning at Record page 318a. Here the Court applies to the amount of interstate commerce restrained a relevant market concept, using as its authority an inapplicable case (R 319a). This case, *Tampa Electric Co.* v. *Nashville Co.*, 365 U. S. 320, was not a tie-in case and therefore did not involve the *per se* rule. It applied a relevant market test to a requirement contract. There was no tying of one product or service to another. It carefully distinguishes tie-in cases (365 U. S. 320, at p. 334), and states (365 U. S. 320, at p. 326), that the necessity of direct proof of economic impact of a tying contract is not required (share of relevant market affected), as is required when a requirements contract is being considered.

The District Court says that a tying contract must create a substantial restraint on interstate commerce in the tied product (R 318a). The law under the Supreme Court cases is that a "not insubstantial"

amount of commerce must be restrained, *i. e.*, it must not be *de minimus, International Salt Co. v. United States, supra.* The Court recognizes that house packages were the tied product but refuses to consider dollar sales figures of house packages. Instead, the Court speaks of the number of acres of land restrained in the context of a share of the market of land available, although this is not even the tied product.

This was a completely improper application of the law and facts again. All of the cases dealing with violations of Section 1 of the Sherman Act which involved illegal tie-in arrangements hold that a relevant market concept is not applicable. *International Salt, supra,* involved $500,000.00 of sales of salt restrained and this has been repeatedly held sufficient. The District Court has not even concerned himself with the restraint in the sales of house packages. It is uncontradicted in the record (R 241a), that Petitioner was obligated to purchase 219 house packages from U. S. Steel as a result of the transactions complained of. The record also shows that the least expensive house package Petitioner had to purchase cost in excess of $3,100.00 each (R 349a-352a), which means that on this transaction alone at least $678,900.00 of commerce was restrained. But the evidence referred to previously also shows that the restrictive loan agreements involved 68% of sales or $3,971,217.76 in 1960, 70% of sales or $2,823,383.50 in 1961, and 75% of sales or $2,289,819.00 in 1962.

Certainly when a Summary Judgment is involved this evidence cannot simply be ignored by the Court.

Certainly it meets the proper tests of this Court's decisions and at least created a question of fact if viewed against Respondent's evidence about the number of acres of land involved.

Money is the source of power in this country. Money in the right quantity or under the right circumstances can be used to achieve almost any goal. The use of money in a unique way can achieve an economic hold on an individual or company as great or greater than that hold achieved by control over a patented product, a franchise, copy-right or trademark and therefore our antitrust law should limit the indiscriminate use of money in the manner. Availability of money is a prime consideration and concern of our entire business community. No one questions the right of one lending money to obtain reasonable security for repayment. When restraints are imposed through the power of money which do not affect the security of the loan, these may or may not be illegal depending on whether there is economic coercion through the particular circumstances of the borrower to take the money offered. We can illustrate this principle as follows. If a particular Corporation A making and selling Product X in the United States has a Customer B buying $250,000.00 of Product X from it learned that that Customer B was in need of financing and could not obtain it at reasonable rates from other financial sources, then Corporation A could arrange directly or through a subsidiary or some lending institution to loan that Customer B the funds required at attractive terms for the customer. Adequate security could be obtained.

If that Corporation A as a condition of that loan required that Customer B buy $750,000.00 of Product X from Corporation A, is this not achieving the very pernicious result the Sherman Act was designed to prevent. Competition for the sale of Product X to that customer is stifled, and customer B's free choice of lower price from others has been eliminated. Corporation A could also obtain new customers in this same manner.

Why should a company itself or especially through another have any more right to impose restraints upon Petitioner and others through a loan of money than they would be able to do under any other contract or arrangement? Petitioner submits that the right does not exist. *Goodyear Tire and Rubber Co.* v. *F. T. C.*, 381 U. S. 357, 85 S. Ct. 1498 (1965). Under the District Court's theory as adopted by the Seventh Circuit a contract setting up the terms under which money will be loaned can impose a tie-in restriction for the benefit of a third party. The logical extension of that theory would be the allowance of resale price maintenance, prohibition of the borrower to engage in business elsewhere, or any other conceivable restraint through loan documents.

CONCLUSION.

In the *Perma Life Mufflers* case, *supra*, the attraction of the Midas brand and advertising program was so great that the plaintiff through economic necessity accepted the restraints in the franchise agreement. In the present case the attraction of financing particularly on terms not available from other sources was so great that Fortner Enterprises, Inc., accepted the restrains in the loan agreements. The argument was made in *Perma Life Mufflers* that when plaintiffs voluntarily signed the contracts they barred themselves from suit. The same argument has been made by the Credit Corporation and U. S. Steel here. This Court has strongly disposed of that argument, finding it completely invalid. There was evidence of coercion which the courts below in both cases ignored but which this Court indicates is of great evidentiary import. In *Perma Life Mufflers* the threat was to cancel the franchises, thus depriving plaintiffs of use of the Midas name and other benefits, but there was no threat that any of plaintiffs' property would be *taken*. In Fortner Enterprise's case the threat was to foreclose on the mortgages and to take or have sold Petitioner's property because Petitioner had been forced into an untenable position due to the tie-in agreement since the tied products were overpriced and defective. These were the very conditions which were created by the Rspondent U. S. Steel, the beneficiary of the conspiracy and tie-in agreement.

There was substantial evidence of the conspiracies charged and to meet the elements of an illegal tie-in agreement including that degree of economic power over the tying element (money under unique terms and circumstances) and a not insubstantial amount of interstate commerce in the tied element (house packages). This Petition should be granted in order that the law on the questions presented can be clarified for the public, in order that business can again be told that it cannot take advantage of those less fortunate through coercive methods, and in order that this Petitioner may have the opportunity for justice through a full trial of his case instead of a summary disposition of it.

Respectfully submitted,

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[APPENDIX A]

MEMORANDUM OPINION—JUDGMENT DISMISSING COMPLAINT AND AMENDED COMPLAINT.

Preliminary Statement.

This is a civil anti-trust action brought under the Clayton Act, §§ 4 and 16, 38 Stat. 731, 737, 15 U.S.C. §§ 14 and 26, for alleged violation by the defendants of Sections 1 and 2 of the Sherman Act, 26 Stat. 209, 15 U.S.C. §§ 1 and 2. Although the complaint states that the action is instituted under 15 U.S.C. § 14, which is Section 3 of the Clayton Act, plaintiff now asserts that this was a typographical error. For the purpose of deciding the motion before the Court, this representation of the plaintiff has no bearing however in view of the court's opinion as set forth below.

The case is before the Court upon a motion for summary judgment for defendants, pursuant to Rule 56 of the Federal Rules of Civil Procedure and involves the legality of a provision in two loan agreements between the plaintiff, Fortner Enterprises, Inc. and U. S. Steel Homes Credit Corporation (sometimes hereinafter Credit Corporation), requiring plaintiff to erect a prefabricated dwelling house manufactured by United States Steel Homes Division (sometimes hereinafter Homes Division) of United States Steel Corporation (sometimes hereinafter Steel Corporation) on each of 219 lots in Jefferson County, Kentucky with respect to which Credit Corporation agreed to loan money to plaintiff to assist in the acquisition and development of the property and the construction of dwellings. The first loan agreement, dated October 28, 1960, involved 187 lots, and was the subject of the plaintiff's original complaint, filed July 19, 1962. The second loan agreement, dated August 2, 1961, involved 32 lots, and was included within plaintiff's amended complaint, filed January 21, 1966.

Statement of the Case.

Plaintiff, in the early part of 1960 was a dormant corporation with a substantial (over $16,000) deficit. It was owned entirely by A. B. Fortner, Jr., of Louisville, Kentucky, with the possible exception of one share of common stock held by Mr. Fortner's wife. Until October 27, 1960, it was not authorized to engage in the building or real estate business. The defendant United States Steel Corporation had its manufacturing plant in New Albany, Indiana across the Ohio River from Louisville, Kentucky. There its Homes Division manufactured component parts for prefabricated dwelling houses. The component parts of prefabricated dwelling houses, sometimes called "home packages," are sold by the defendant Steel Corporation generally throughout the United States east of ths Mississippi River and in a tier of states just west of that river. The defendant Credit Corporation is a wholly owned subsidiary of the other defendant Steel Corporation. Its sole business function is to furnish financial assistance to customers or dealers of the parent corporation's Homes Division, in instances in which they apply for such assistance and seem to be unable to obtain the same sort of assistance on reasonable terms from normal sources. The underlying purpose of the Credit Corporation's function is to enable its parent, in the sale of home packages, to compete with other building material manufacturers, sellers, lumber yards, brick factories and other prefabricated house manufacturers, who provide similar assistance to their customers.

With this background of the general situtation, the court now turns to the precise point in issue which is whether the defendants, parent and subsidiary, allegedly "conspired to establish an unlawful tying agreement between the defendant Credit Corporation and the plaintiff Fortner Enterprises, Inc., which required the plaintiff to purchase and build homes manufactured and sold by U. S.

Steel Corporation in plaintiff's subdivision in violation of Sections 1 and 2 of the Sherman Act." See Paragraph 1, Plaintiff's tendered instructions furnished the court pursuant to pre-trial order. In the light of this succinct statement of the plaintiff's basic claim, the court now examines in more detail the uncontroverted facts surrounding the execution of the first questioned contract, dated October 28, 1960. Shortly prior to that date plaintiff was a dormant corporation, controlled by A. B. Fortner, Jr. and had a substantial financial deficit. The defendant Homes Division was in the business of selling home packages. Plaintiff had available to it property in Jefferson County, Kentucky, suitable for subdivision purposes. This property was readily available to plaintiff because of Mr. Fortner's interest in another corporation then holding title to same. The plaintiff however had no funds to purchase or develop land or purchase home packages or otherwise build homes or indeed engage in any business. There were ample funds available in Louisville, Kentucky during 1960 for borrowers. From local sources alone the figure exceeds $163,330,000. In addition to this figure $133,316,000 in real estate mortgages were recorded in Jefferson County, Kentucky in 1960. Credit Corporation had no monopoly or "corner" on money at that time, nor does plaintiff contend to the contrary. Mr. Fortner was not then disposed to provide plaintiff with funds from any other source, including a personal investment, but instead applied for money from the Credit Corporation with which to buy property from the other corporation in which it had an interest. Thereafter plaintiff, using funds also borrowed from the Credit Corporation completed or at least partially completed the development of that property. And finally, again using funds borrowed from the Credit Corporation, constructed homes on part of the property thus acquired and developed utilizing in the construction thereof home packages pur-

chased from the Steel Corporation. Plaintiff concludes in affidavits furnished by it that all of this was to the sole advantage of the defendants. The court finds however that in this particular transaction, (as in most transactions), both parties to the transaction felt it would be to their mutual advantage. Certainly the plaintiff was not coerced nor compelled to enter into the contract about which it now complains. Prior to the execution of the first contract it was not transacting any business of substance and entered into the arrangement with the expectation that it would be profitable to it.

The particular transaction is evidenced by three types of written documents. There are notes which are evidence of the debts incurred or to be incurred as funds were advanced. There is a mortgage in recordable form and a loan agreement which is the tie-in contract about which plaintiff now complains. All of these three types of documents are part of the same transaction. Indeed the loan agreement on its face recites that these documents constitute the "agreement" between the parties. The loan agreement in substance requires that while there is money due the Credit Corporation from the plaintiff, the property encumbered by the mortgage shall be developed with single family dwellings utilizing as a component part thereof home packages purchased from the United States Steel Corporation, Homes Division. The property encumbered by the mortgage and hence subject to the provisions of the loan agreement consisted of approximately 55 acres in Jefferson County, Kentucky. A t the time this contract was made, Jefferson County, Kentucky contained approximately 240,000 acres, of which approximately 171,484 acres were suitable for subdivision into single family lots or were then being so developed. In essence the arrangement between the plaintiff and the Credit Corporation is one of borrower-lender, with the lender imposing certain restrictions on the

plaintiff's property purchased with the borrowed funds, but only while the debt remains unpaid. For our purposes here, the principal restriction while the debt is outstanding is the requirement that plaintiff utilize home packages purchased from the Credit Corporation's parent, when it constructs dwellings on the 55 acres purchased and developed with funds obtained from the Credit Corporation. The loan agreement is not an exclusive dealing contract within the normal use of that term. Plaintiff is not prohibited from purchasing prefabricated homes from the Steel Corporation's competitors or building conventional homes or engaging in any other business, competitive to the defendants or not, except on the 55 acres here involved. The day following the execution of this loan agreement, plaintiff under a similar arrangement with defendants' competitors, could well have purchased additional property, developed it and built homes on it, in competition with the defendants. At any time, plaintiff could have liquidated the debt to defendant Credit Corporation and be relieved from all obligation to it, including the restriction or encumbrance affecting the 55 acres.

On October 31, 1960, plaintiff entered into a franchise contract with the Homes Division. But none of this transaction between the plaintiff and the defendant Credit Corporation affected in any way that franchise with the Homes Division. The Homes Division would sell home packages to anyone who could pay for same. It was not a requirement to become a franchise dealer or to buy home packages that any would be purchaser, including plaintiff, borrow money from the Credit Corporation. Nor was it a requirement if the would be purchaser, including plaintiff, needed to borrow money that it borrow money from the Credit Corporation. Nor would the plaintiff or any other franchise dealer lose his franchise because having once borrowed from the Credit Corporation, it liquidated that debt. In short, the transaction before the court is simply one in

which certain restrictions as to use were placed on 55 acres of land in Jefferson County, Kentucky, while there was an outstanding debt in connection with the purchase and development of that property. There is no general restriction on the plaintiff nor any change in the situation as a result of the debt's liqiudation, except that all restrictions are removed.

The same general facts relate to the second of the two questioned contracts, which was executed October 2, 1961, except that there, only an additional 7.3 acres were involved and the plaintiff had been engaged in the development of the subdivision acquired with the proceeds of the first loan for about seven months.

No additional facts were suggested or offered at or prior to the hearing on defendants' motion for a summary judgment which would alter the basic facts outlined above. There can be no dispute as to the facts derived from the various contracts and documents since they speak for themselves. The size of the property restricted was not questioned. Therefore the court is compelled to the conclusion that the case is one for decision on summary judgment. That the defendants did or did not conspire to achieve the tie-in contracts is of no consequence at this time. It is the contracts themselves which give rise to and furnish the basis for plaintiff's claim. If these contracts do not meet the tests determining violations of the anti-trust acts, then they can furnish no claim for damages for a violation of the anti-trust laws, regardless of any other damage, real or imagined, flowing therefrom. Those claims simply may have become claims for breach of contract or related claims but are not within the purview of the anti-trust laws.

Conclusions of Law.

The abandonment of a claim under the Clayton Act only serves to increase plaintiff's burden since that later statute is broader in its concept, and conduct which would

violate Section 3 of the Clayton Act need not violate Sections 1 and 2 of the Sherman Act. This proposition is found conversely stated in the closing paragraph of Tampa Electric Co. v. Nashville Co., 365 U. S. 320. This abandonment or "erroneous" complaint regarding Section 3 of the Clayton Act is of small consequence however since the court is of the opinion that the allegedly illegal tie-in contracts do not fall "within the broader prescription of §3 of the Clayton Act" and hence do not violate the provisions of the Sherman Act on which plaintiff now professes to rely. Tampa Electric Co. v. Nashville Co., supra; Times Picayune Publishing Co. v. United States, 345 U. S. 594.

On its face, the complaint is at variance with the Exhibit Loan Agreement (the questioned contract) filed as an exhibit thereto. The complaint will be controlled and modified by the terms of the written exhibit on which plaintiff bases its causes of action. Consolidated Jewelers, Inc. v. Standard Financial Corporation, 325 F. 2d 31; Ingram v. State and Building Corporation, Ky., 309 S. W. 2d 169. It is desirable in a summary judgment proceeding to have the issues set forth in the complaint made clear. The complaint thus modified by its exhibit, alleges that a condition for borrowing money from the Credit Corporation is that plaintiff will use home packages purchased from the Steel Corporation in the construction of homes on the 55 acres in Jefferson County, Kentucky bought and developed with Credit Corporation's fund while the debt is outstanding. Reference is made to the Findings of Fact hereinabove set forth.

The amended complaint likewise must be modified by the Exhibit Loan Agreement, which by reference is incorporated as a part of it.

It is these loan agreements which plaintiff claims are illegal tie-in contracts, violative of Sections 1 and 2 of the Sherman Act. The fact of conspiracy or lack of it, surrounding or related to the execution of these contracts has

no bearing on the matter at this point. If the contracts are illegal under the facts attendant thereto, then plaintiff has a cause of action and may then proceed to prove conspiracy. And if successful in this endeavor to prove the damage flowing therefrom.

The court will only discuss in detail the earlier contract, executed in 1960. It will not be necessary to discuss the later (1961) contract, since it is similar to the earlier contract and for the reasons herein stated, the court's views on the earlier contract apply with equal vigor to the second and later contract, brought into this case by an amended complaint.

Tie-in contracts have been the subject of both public and private litigation. By public, the court means litigation instituted by the United States Government in enforcement of the anti-trust laws and by private the court means actions such as we have here. The United States Government has taken no part here, even earlier by civil or criminal action as sometimes happens. Even though the anti-trust laws expressly provide for private redress if those laws are violated, it still must be borne in mind that the ultimate aim is public good, "for it is the theory of the anti-trust laws that the long run advantage of the community depends on the removal of restraints upon competition." Standard Oil of California v. United States, 337 U. S. 293. This is not to say that there are different standards between public and private litigation (unless expressly provided which is not the case here) in the general enforcement of the anti-trust laws, but clearly it is not the purpose of the anti-trust laws to furnish treble damages where there have been only ordinary breaches of contract, conspiracies to injury reputation or property, etc.

There are two distinct elements or parts of a tie-in contract, both of which must violate the anti-trust laws before such a form of contract can be the basis for a claim under

those laws. A contract may be offensive as to one element or the other, yet not furnish the basis for an anti-trust action. Both requirements must be met. These contracts "are unreasonable in and of themselves wherever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a not insubstantial amount of interstate is affected." Northern Pacific Railroad Co., v. United States, 356 U. S. 1. Phrased another way, to make a tie-in contract illegal, the offender must possess "monopoly power or, at the very least a high degree of economic control in the market for the tying service and" the tie-in result in a "substantial restraint upon competition in the market for the tied service." Centanni v. Smith & Son, Inc., 216 F. Supp. 330. See also International Salt Company v. United States, 332 U. S. 392 and Times-Picayune Publishing Co. v. United States, 345 U. S. 594. The court will discuss the elements of a tying contract in the order indicated. Here money from the Credit Corporation is the tying product and home packages sold by the Steel Company are the tied product.

Obviously and as indicated in the court's Statement of the Case, the defendant Homes Corporation does not enjoy a monopoly of, nor a patent on money. Plaintiff argues, because of its financial plight at the time it made the contract, Credit Corporation's agreement to 100% financing was so unique that this was tantamount to monopoly power or a high degree of control of the tying product. Credit Corporation's generosity to the plaintiff does not go to the availability of the tying product in the market place and obviously others, if they chose, could lend to plaintiff money on the same terms and conditions as defendant Credit Corporation. Simply stated, a plan or proposal for the generous use of the tying produce (money) is not equivalent to economic power with respect to the tying product. The

test set in the cited cases is not met simply by contending the proposal for the use of the tying product is more generous than others may propose. The unique feature of Credit Corporation's plan and its attraction for the plaintiff is not general and it must be general in the market place to fulfill the requirements found in the cited cases. Indeed many people may not find Credit Corporation's arrangement with plaintiff attractive. They may not desire the restrictions or find them useful. If however Credit Corporation enjoyed monopoly or a hight degree of economic control in the market for money, others would have no choice but to adopt the plan. The test is universal compulsion not a peculiar attraction for one corporation as here. This singular attraction does not create market dominance or economic control over the product in and of itself and "of course where the seller has no control or dominance over the tying product so that it does not represent an effectual weapon to pressur buyers into taking the tied item any restraint of trade attributable to such tying arrangements would obviously be insignificant at most." Northern Pacific Railroad Co. v. United States, supra. This principle leads logically to consideration of the second element required to be found in an illegal tie-in contract.

To be bad under the anti-trust laws the contract must also create a substantial restraint on competition involving the sale of the tied product (home packages). If the relevant market concept as to the restriction found in the contract would relate to the area in which the defendant Steel Corporation competed, comparison between the 55 acres affected and the total area in which the Steel Corporation competes in the sale of its home packages becomes ludicrous. Tampa Electric Co. v. Nashville Co., supra. Being more realistic, since plaintiff conducts only a local operation, the court feels the geographical comparison for the effect on interstate commerce should be made between Jef-

ferson County Kentucky and the encumbered 55 acres. But even here the discrepancy between the restricted property and the portion of the county available for development is great. Only .00032% of the available area in the county is affected by the contract. To further lessen the strain, if any, on competitive restraint, the loan agreement does not prohibit plaintiff generally from purchasing competitive products from others and it permits complete competition when the indebtedness to the Credit Corporation is liquidated. All of this without effect on plaintiff's franchise contract with the Steel Corporation.

Hypothetical illustrations of possible situations under the present contract, as it affects competition, will demonstrate the weakness and minimal effect of it on competition. Suppose the Steel Corporation produced a markedly inferior product and was unable to sell it without some sort of a tie-in device and (here the court assumes Credit Corporation has a monopoly on money). The present arrangement captures for the defendants certain territory (55 acres) in Jefferson County, Kentucky, leaving to the general public 99.99968% of that county in which to build homes purchased from Steel Corporation's competitors. This could include purchases through the medium of the plaintiff itself since it was not generally restricted. Thus, both the general public and the defendants' competitors have practical freedom of choice in Jefferson County, Kentucky. A second illustration will indicate the fallacy of claiming that it is the market for single dwellings or even in a more restricted sense, prefabricated single family dwellings, from entering into the concept. Assume the absurd but legally possible situation in which Jefferson County, Kentucky's market for single family or prefabricated single family dwellings was only one such dwelling unit annually. In the situation before the court, the potential buyer of that single family dwelling unit from plaintiff,

or from others in competition with plaintiff, or directly from suppliers in competition with the defendant Steel Corporation, or anyone, has 99.99968% of the county in which to locate the home and fulfill his needs. In summary, the restriction here fails to "suffer the qualifying disability" which is a "tendency to work a substantial—not remote—lessening of competition in the relevant competitive market." Tampa Electric Co. v. Nashville Co., supra.

For the foregoing reasons, the courts concludes as a matter of law that the contract fails to meet either of the requirements necessary for it to be illegal under the anti-trust laws.

Other Matters

The affidavit of Albert F. Reutlinger is ordered filed of record herein, there being no objection on the part of plaintiff.

Defendant's tender of an amended answer setting up a Fourth Defense, that of pari delicto, served by mail on plaintiff's attorney June 10, 1966 comes too late and this amended answer will not be permitted to be filed.

In view of the court's decision on defendants' motion for a summary judgment, it is not necessary that it consider of rule on other pending motions made by the defendants directed to the amended complaint, nor does it rule on any of the objections made by the defendants to certain exhibits which plaintiff indicated it would tender at the trial of the case.

Plaintiff's counsel, several days after the hearing on defendants' motion for a summary judgment, tendered his affidavit and that of Herman Miles, to be considered in connection with that motion. This is too late. These affidavits should have been filed prior to the day of the hearing to be considered. See Rule 56, They may not now be filed. The content of these affidavits however, had they been con-

sidered, is such as would not affect the court's decision on the summary judgment.

During the course of the recent hearing, plaintiff suggested that the judgment entered January 15, 1964, in Action Number 4392-A, styled Fortner Enterprises, Inc. v. U. S. Steel Homes Credit Corporation was not final and would be appealed. The record discloses that this companion case arose out of a counterclaim by defendant U. S. Steel Homes Credit Corporation to obtain a judgment for the funds advanced and to foreclose the mortgage securing the debt then in default. After the issues were joined by reason of the counterclaim, this court entered an order separating the trial of the within anti-trust action from the mortgage foreclosure action. Thereafter, in the mortgage foreclosure action certain issues were raised and resolved by a judgment. This judgment finally and fully disposed of all issues between the two parties to Action Number 4392-A in this court, styled Fortner Enterprises, Inc., Plaintiff v. U. S. Steel Credit Corporation, Defendant. Judge Shelbourne, now Senior Judge of this court, entered the judgment in that foreclosure action. It is his opinion and belief, and in it the court concurs, that the judgment entered in that separate foreclosure action was a final judgment and subject to appeal from and after the date of its entry, since it disposed of all issues then pending between the parties to that separate action.

CONCLUSION

Plaintiff's motion to have the affidavits of Kenneth L. Anderson and Herman Miles filed is overruled. They may be tendered.

Defendants' motion to have the court order its amended answer tendered July 6, 1966 filed of record is overruled. No order is entered on other pending motions, except on defendants' motion for a summary judgment. This motion

for a summary judgment is sustained, and the complaint and the amended complaint are dismissed, plaintiff to pay all costs.

James F. Gordon
Judge

A Copy: Attest
Martin R. Glenn, Clerk
By F. Allen
Deputy Clerk

September 7, 1966
Emphasis supplied.

JUDGMENT.

It Is Ordered And Adjudged that defendants' motion for summary judgment is hereby sustained; the complaint and the amended complaint are dismissed with prejudice, that the plaintiff take nothing, and that the defendants, United States Steel Corporation, and U. S. Steel Homes Credit Corporation recover of the plaintiff, Fortner Enterprises, Inc. their costs of action.

James F. Gordon
United States District Judge

September 8, 1966

[APPENDIX B]

No. 17546

UNITED STATES COURT OF APPEALS

For the Sixth Circuit

Fortner Enterprises, Inc., - - Plaintiff-Appellant,

v.

United States Steel Corporation, and U. S. Steel Homes Credit Corporation, - - - - - - Defendants-Appellees.

Before: Edwards and Peck, Circuit Judges, and McAllister, Senior Circuit Judge.

ORDER—Filed April 26, 1968.

The above cause coming on to be heard on the briefs of the parties, the transcript of the record, and the argument of counsel in open court, and the court being duly advised; now, therefore, it is hereby ordered, adjudged and decreed that the judgment of the District Court be and is hereby affirmed for the reasons set forth in the memorandum opinion of Judge James F. Gordon.

Entered by order of the court

(s) Carl W. Reuss
Clerk

[APPENDIX C]

Section 1 of the Sherman Act, 15 U.C.S. 1:

§ 1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided,* That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further,* That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be

deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, § 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693; July 7, 1955, c. 281, 69 Stat. 282.

* * * * * *

Section 2 of the Sherman Act, 15 U.S.C. 2:

§ 2. Monopolizing trade a misdemeanor; penalty.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, § 2, 26 Stat. 209; July 7, 1955, c. 281, 69 Stat. 282.

* * * * * * *

Section 4 of the Clayton Act, 15 U.S.C. 15:

§ 15. Suits by persons injured; amount of recovery.

Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit; including a reasonable attorney's fee. Oct. 15, 1914, c. 323, § 4, 38 Stat. 731.

* * * * * * *

Section 16 of the Clayton Act, 15 U.S.C. 26:

§ 26. Injunctive relief for private parties; exception.

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided,* That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission. Oct. 15, 1914, c. 323, § 16, 38 Stat. 737.

* * * * * * * *

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 306

FORTNER ENTERPRISES, INC., - - Petitioner,

versus

UNITED STATES STEEL CORPORATION,
U. S. STEEL HOMES CREDIT CORPORATION, - - - - - - Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 306

FORTNER ENTERPRISES, INC., - - - *Petitioner,*

v.

UNITED STATES STEEL CORPORATION,
U. S. STEEL HOMES CREDIT CORPORATION, - *Respondents.*

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

STATEMENT.

Petitioner simplifies this Response by presenting three allied questions, none of which address themselves to the specific matters enumerated in this court's Rule 19. Of necessity then, the petition as presented, must fall within that language of this court's Rule 19 which points out that the enumerated reasons for granting the writ are "neither controlling nor fully" measure the court's discretion.

In discussing the three questions presented they must be reframed, since as presented in the abstract, they do not present the real questions. As to the facts

of the matter, we urge the court to avail itself of the District Court's lucid presentation, commencing at page 84 of Appendix A to the Petition. There is no real fact issue in the case. All transactions are evidenced by written documents. These documents speak for themselves. Other basic facts are not disputed.

At the risk of oversimplification, we find the real basis for the Petition (Petition, page 11), is that the District Court evaluated the evidence and then misapplied the law. Needless to say, we do not agree with opposing counsel's conclusion but even if so, this does not appear to be a proper basis for granting the writ, particularly when the decision of the District Court, thus critized, was affirmed *per curiam*.

RESPONSE TO REASON I FOR GRANTING THE WRIT.

The question as stated by Petitioner, asks the court to find that the decision was improper, in that a summary remedy should not have been granted when there was "ample evidence" to support the complaint. There is very little we can do with a question like this. Of course it is error for such to take place. What Petitioner is really telling the court is that its conclusion, that there was ample evidence in the record to support the complaint was not shared by the District and Circuit Courts. Following this question in the Petition is a lengthy argument which is repeated when Petitioner details Reasons II and III for granting the writ. Discussion here of Point I would be repetitious when the two remaining points are considered.

The District Court and the Sixth Circuit Court of Appeals, relying on Northern Pacific Railway Company v. United States, 365 U. S. 1, 2 L. Ed. 2nd 545 (1958), recognized that there must be two elements to constitute an illegal tie-in contract. The offending party must have economic power with respect to the tying product, such as to restrain competition for the tied product and a not-insubstantial amount of commerce must be affected. Reason II (Petition, page 20) deals with the tying product, which in this case is money and Reason III (Petition, page 26) treats the transaction's affect on commerce.

RESPONSE TO REASON II FOR GRANTING THE WRIT.

At the outset, we are faced with the question of whether or not money can be a tying product because of its scarcity. But in the instant case, this question is never reached since the record discloses, without contradiction, that there were ample funds available locally—not taking into account the availability of money in other financial centers, to finance the project (Affidavit of Dobbins, R. 275a). Conceding this point, Petitioner argues that the plan of using the money was unique and this is the basis for its presentation of Reason II. As the question is framed by Petitioner it concludes, as a premise, that in fact the plan was unique. The question does not raise the true issue. Petitioner fails to point out here and did not point out in the courts below why the plan was unique and why others were precluded from following the plan,

if they desired. The lower courts did not agree with Petitioner's conclusion simply because the plan was neither unique, nor unusual.

The essence of the plan is this. The Petitioner, having insufficient funds or credit, represented to the Respondents that it wished to borrow money to acquire land, then to borrow money to develop land and then to borrow money to buy Respondents' product. Respondents agreed to this but only on the condition that Petitioner would place its products on the land thus acquired and thus developed with Respondents' money, but the restriction lasts only while the debt was unpaid (Loan Agreement, R. 24a). The things that were not required are the key to this transaction. There was no requirement that Petitioner borrow money in order to purchase Respondents' products. If however, Petitioner was required to borrow money in order to buy Respondents' products there was no requirement that it borrow from Respondents. Finally, there is no requirement that Petitioner purchase any number of units from the Respondents, the Petition to the contrary notwithstanding (Dealer's Franchise, R. 34b). Should Petitioner repay the loan he does not lose the Dealer's Franchise, it requires nothing except payment for the products and other customary contractual provisions. There is nothing unique or unsual about the loan.

Absent from the case is the element of coercion. Corporate petitioner was dormant prior to the transaction and in fact was not even authorized to engage in the form of business here involved, until the day be-

fore the questioned contract was made (Affidavit of Rollins, R. 278a). Petitioner in the first instance was not compelled to do anything at all—it could have remained dormant. Or if it needed money its stockholders could have provided it or it could have borrowed elsewhere. All of this without prejudice to its purchase of the Home Packages (tied product) from Respondents.

RESPONSE TO REASON III FOR GRANTING THE WRIT.

Arguing on a dollar basis the Petitioner contends that there was a substantial affect on Interstate Commerce by reason of the transaction. This basis is not necessarily the proper one. Volume of dollars involved may or may not determine affect on commerce, Tampa Electric Company v. Nashville, 365 U. S. 320, 5 L. Ed. 2d 580 (1961). The relevant market area also has bearing on the issue. In the instant case, because of the limited geographical effect of the restriction the relevant market area, in reality, is almost the same as the share of the market concept Petitioner advocates. Respondents' market area is so large the District Court approached the matter from a local (Jefferson County, Kentucky) standpoint. He noted correctly that the so-called restrictive contracts affected only .00032% of the available area in Jefferson County, Kentucky (Affidavit of Harb, R. 276a, Affidavit of Rollins, R. 278a). The questioned restrictive agreements do not prohibit Petitioner from dealing with others and (Petitioner to the contrary notwithstanding) it is not required to

purchase anything. The end result of the so-called restriction is to deny that exceedingly small portion of Jefferson County, Kentucky, purchased and improved with Respondents' funds, from being developed other than with Respondents' products BUT only while the debt is outstanding. And even while the debt remains unpaid Petitioner may develop the balance of the county, deal and make similar transactions with Respondents' competitors and otherwise freely transact business. Because there is no requirement to purchase and only a small area is affected, and that only while the debt is outstanding, the effect on competition is remote rather than substantial.

THE *PARI DELICTO* QUESTION.

Throughout the petition for the writ and specifically at its conclusion, Petitioner makes reference to and strongly argues that this court accept the case on the strength of Perma Life Mufflers, Inc., et al. v. International Parts, et al., decided by this court June 10, 1968 (Citation not available). Apparently Petitioner does so because this recent case, which does away with the defense of *pari delicto,* was not decided when the Sixth Circuit reviewed the decision of the District Court. Petitioner incorrectly goes on to state that the Respondents argued the defense of *pari delicto* and that the District Court and the Circuit Court relied on that argument. This simply is not true. The Respondents, in the District Court, on June 10, 1966, attempted to amend their answer, setting up the defense of *pari*

delicto. The District Court however entered the following order and that was the end of the matter, once and for all (See page 44, Appendix A).

> "Defendant's tender of an amended answer setting up a Fourth Defense, that of pari delicto, served by mail on plaintiff's attorney June 10, 1966, comes too late and this amended answer will not be permitted to be filed."

CONCLUSION.

There appears to be no valid reason to grant a writ of certiorari when, except for this court's admitted discretion, the case does not fall within the specifically enumerated reasons for review.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 306

FORTNER ENTERPRISES, INC., - - *Petitioner,*

v.

UNITED STATES STEEL CORPORATION, U. S. STEEL HOMES CREDIT CORPORATION, - - - - - - - - *Respondents.*

BRIEF FOR PETITIONER.

CITATIONS TO OPINIONS BELOW.

The Memorandum Opinion-Judgment of the District Court is unreported (309a) and for ready reference is printed in Appendix "A" hereto, *infra,* App. A 39. The judgment of the District Court is unreported (322a), and is printed in full in Appendix "A" hereto, *infra,* App. A 52. There was no opinion of the Circuit Court of Appeals for the Sixth Circuit. An Order was entered by the Court on April 26, 1968 affirming the judgment of the District Court and said Order appears in the Record (page 5), and is printed in Appendix "B" hereto, *infra,* App. B 53. Said Order is not reported. The Petition for Writ of Certiorari was filed on July 18, 1968 and sustained on October 14, 1968.

JURISDICTION.

The Judgment of the Circuit Court of Appeals was entered on April 26, 1968, App. "B," *infra,* App. B 47. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

STATUTES INVOLVED.

The statutes involved are Sections 1 and 2 of the Sherman Antitrust Act, 15 U. S. C. 1 and 15 U. S. C. 2, and Sections 4 and 16 of the Clayton Act, 15 U. S. C. 15 and 15 U. S. C. 26. The foregoing are printed in Appendix "C," *infra,* App. C 54.

QUESTIONS PRESENTED.

I. May a Federal Court in an antitrust suit charging a contract, combination and conspiracy to restrain commerce and an illegal tie-in agreement in violation of Section 1 of the Sherman Act and a conspiracy to monopolize in violation of Section 2 of the Sherman Act dismiss such a suit through Summary Judgment procedures when ample evidence was in the record to support all elements of the charges as set forth in the established cases?

II. When large and wealthy companies such as United States Steel Corporation and its credit subsidiary U. S. Steel Homes Credit Corporation lend money to borrower under unique and unusual terms not available elsewhere to obtain mortgages and loan agreements which require borrower (Fortner Enterprises, Inc.)

". . . to erect on each of said Lots . . . . a prefabricated dwelling house manufactured by United States Steel Homes Division, United States Steel Corporation . . ." is there created an illegal tying agreement in violation of Section 1 of the Sherman Act?

III. Is a minimum of $678,000.00 of sales or obligations to purchase of a tied product a not insubstantial amount of interstate commerce to satisfy the second element of an illegal tie-in agreement and should the Federal Courts have applied a share of the market test to a case involving a tie-in agreement?

STATEMENT OF THE CASE.

1. The Facts.

The Petitioner, Fortner Enterprises, Inc., was a corporation in existence in 1959 principally owned by Mr. A. B. Fortner, who also had an interest in another corporation which owned some highly desirable land suitable for residential development. It was located in Louisville, Kentucky. The engineering on this land had been done and the necessary approval had been obtained from the appropriate zoning authority (Document 54, 385a, 392a).

United States Steel Corporation (henceforth called U. S. Steel), at that time had a division called the "Homes Division" with a plant in New Albany, Indiana, just across the Ohio River from Louisville, Kentucky. U. S. Steel also at that time had a separate wholly owned corporate subsidiary called U. S. Steel

Homes Credit Corporation (henceforth called Credit Corporation).

U. S. Steel's Homes Division manufactured or purchased and sold prefabricated house packages and their component parts. U. S. Steel would franchise builders who would buy and erect the U. S. Steel homes in subdivisions.

The Credit Corporation was formed in 1954 upon authorization of the Finance Committee of U. S. Steel (753a). The minutes of that meeting authorized capital of $5,000,000.00 to be used to provide construction and mortgage financing to dealer-builders (753a). This corporation was to be operated on a sound financial basis entirely independent of U. S. Steel (754a). A document attached to those minutes from United States Steel Homes, Inc. (the predecessor of the Homes Division) states that sales of homes would be stimulated, but it then emphasized that "It is understood, however, that the finance corporation will be used to render financial service requested by dealer-builders and will not be used as a means to force sales to dealer-builders" (758a).

The above principles of operation were changed in December, 1958, according to the Finance Committee minutes of December 16, 1958 (763a). A program was approved at that time to enable the Homes Division to attain a minimum distribution of 1,800 house packages in 1959. This program was to be effectuated by making loans above and beyond their conventional construction and home mortgage loans, without conformity with conventional or conservative patterns (764a). In

turn, the Homes Division would underwrite any Credit Corporation losses (764a).

This program of special type loans for land acquisition and development and construction was approved and expanded by U. S. Steel through 1962 (764a through 766a).

In 1959, the first year the special financing program was put into effect by the Credit Corporation after approval by U. S. Steel, Mr. A. B. Fortner, President of the Petitioner Fortner Enterprises, Inc., was approached by representatives of U. S. Steel who wanted to get him to develop the available land and build U. S. Steel homes thereon (289a, 290a, 438a).

A memorandum in the U. S. Steel files recommends that the matter be pursued, although in the special financing category (385a through 388a). On the basis of that memorandum, the President of the Homes Division of U. S. Steel wrote the president of the Credit Corporation on December 30, 1959 (389a), requesting the Credit Corporation to negotiate with Plaintiff in order to assist in providing additional shipments of home packages in the Louisville area in 1960.

The negotiations proceeded sporadically until September, 1960. The homes were not particularly attractive to Petitioner but the representatives of Credit Corporation made very attractive offers of financing until they arrived at the point that they offered to provide maximum financing for land acquisition and development (290a). Coupled with the offer of financing was a condition that Petitioner only purchase and erect on the lots in Petitioner's subdivision homes man-

ufactured and sold by U. S. Steel (290a). This offer of financing was so unusual and unique insofar as Petitioner was concerned that through economic necessity it was accepted (290a). Not only was this type of financing unique to Petitioner, it was unique in financing circles generally in the Louisville, Kentucky area in 1960 when it was made and accepted according to the affidavit of one of the leading mortgage lenders in the Louisville area (294a, 295a). Such loans were not available under the terms made at that time from any other source.

Certain written agreements were then made including a loan agreement signed on October 28, 1960 (24a, 291a), and mortgages were signed by Petitioner (39a-46a). The instruments were between Petitioner and Credit Corporation. U. S. Steel was not a *party* to them. But the loan agreement specifically required Petitioner to erect a prefabricated home manufactured by U. S. Steel on each lot in the subdivision (27a, 28a).

The financing was provided and the work was begun. Defects in and problems with the prefabricated houses appeared and multiplied. The problems with the homes got so bad that in the latter part of 1961 or early in 1962, Petitioner requested Credit Corporation to relieve Petitioner of the restrictive portion of the loan agreement which required Petitioner to erect on each lot a U. S. Steel home (26a), but this was refused (291a) and Petitioner was told it would have to continue with the U. S. Steel homes.

The record contains a voluminous listing of the complaints and defects in the house packages attributed to U. S. Steel (118a through 127a; 527 a through 592a).

The problems with the houses continued to get worse and the subdivision of Petitioner had by then obtained a bad reputation. On May 31, 1962, representatives of Petitioner and both Respondents met and Respondents were again requested to allow Petitioner to build conventional homes so Credit Corporation could be paid but this was met with an adamant refusal (293a) and threats of foreclosure on the mortgages. Petitioner as of June 6, 1962 had kept its account current with Credit Corporation (428a, 429a), but the coercion of Respondents and their insistence on enforcement of the tying agreement resulted in the filing of this antitrust suit in July, 1962, and the cessation of payments.

The uncontradicted evidence in the record is that the Credit Corporation in this and many other instances was used as a "tool" by U. S. Steel to obtain sales of its home packages (763a, 764a, 362a-364a), in spite of the fact that the original intent in the formation of the Credit Corporation was not to use it as a means to force such sales (756a-759a).

All loans made by Credit Corporation to finance the acquisition and development of real estate have the tying agreement in them as was described in a part of Credit Corporation's Answer to Interrogatory 17 (167a):

> "Loans made to finance the acquisition of subdivided real estate, or to finance the development of real estate as subdivisions, are made against mortgage security with provisions for partial releases of individual building lots upon satisfactory

> evidence that the lot has been improved with a residential structure utilizing products of United States Steel Homes Division, or upon satisfactory assurances that the lot is to be so improved."

The same provision also applies to loans made for house construction (167a, 168a).

The general purpose of Credit Corporation has been described by its Vice-President Dyas as (851a):

> "Well, the general purpose is to provide financial assistance to customers or dealers in which they apply for such assistance, and seem to be unable to obtain the same sort of assistance on reasonable terms from normal sources."

The President of the Credit Corporation has admitted that the loans to Petitioner were made to help U. S. Steel obtain a broader distribution in the Louisville market (839a), that the tie-in was used under the dictate of U. S. Steel (838a, 839a) and that it was Credit Corporation's intent so long as the loan agreements were in effect to require Petitioner to put U. S. Steel homes in Petitioner's subdivision (840a).

That the financing under the terms and conditions offered Petitioner and many others was unique and unavailable elsewhere can be found in the Homes Division Sales Manual (374a), which indicates that the ordinary financing program on land acquisition and development was a 60% loan (374a), with frequently a "prior sales" requirement of a certain number of sales before development money would be put forth (367a). Neither limitation was observed in the final offer to Petitioner. Significantly, the Sales Manual also points

out that the major competitors of the Homes Division made development loans at simple interest plus a 10% fee, whereas, the Credit Corporation charged simple interest plus a ½ point fee (377a).

The extent of the use of the Credit Corporation to force sales of homes packages to dealers is illustrated by the statistics in the record. The Credit Corporation, in 1960 made loans totalling $22,625,805 (675a) to achieve sales of home packages worth $3,971,217.76 (183a, 676a, 677a). For 1961 loans of $19,342,612.00 were made to achieve sales of $2,823,383.50. In 1962 loans of $19,283,544.00 were made to achieve sales of $2,289,819.00. All of these loans with insignificant exceptions (676a) were made with the restrictive tying agreement in the applicable loan agreements (167a). These loans accounted for 68% of Homes Division sales in 1960, 70% in 1961 and 75% in 1962 (676a and 677a).

The transaction with Petitioner involved loans or loan commitments in excess of $2,500,000.00 (25a, 244a) and obligated Petitioner to purchase 219 house packages (24a, 243a) at a minimum price of $3,100.00 each (350a), so the tying agreement with Petitioner alone involved a minimum of $678,900.00 of purchases of prefabricated homes.

Finally, the evidence shows that the house packages of the Homes Division cost Fortner Enterprises in 1961 and 1962 from $443.00 to $455.00 more than a comparable available competitive prefabricated house or a comparable conventional house (Affidavit of Herman Miles, 349a through 356a).

2. Proceedings Below.

This is a suit for damages and an injunction under Section 4 of the Clayton Act (15 U. S. C. 15) (App. C 35) and Section 16 of the Clayton Act (15 U. S. C. 26) (App. C 56). The damages claimed are for profits lost and the dimunition in the value of Petitioner's real estate as a result of the unwarranted foreclosure action as set forth in the Complaint (2a), and the Amended Complaint (239a).

The Complaint charging violation of Sections 1 and 2 of the Sherman Act was filed on July 19, 1962 (2a). Much discovery was had thereafter, principally by Petitioner, including interrogatories, numerous depositions and the production of numerous documents by Respondents. All of the pertinent material to Petitioner's cause appears in the two volume appendix in the record before this Court and is quite extensive. Matters involving foreclosure by the Credit Corporation on Petitioner's property consumed much time of the parties.[1]

The antitrust suit was finally set down for trial on July 6, 1966, in the District Court for the Western

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[1]The District Court granted Respondent Credit Corporation foreclosure on its counterclaim and Petitioner's property was sold although Petitioner has strongly contended that the foreclosure Judgment (192a), was not final under Federal Rule of Civil Procedure 54(b) since there was no certificate of "no just cause for delay" and no express directions for entry of judgment contrary to said rule and *Sears, Roebuck & Co.* v. *Mackey*, 351 U. S. 427, 100 L. Ed. 1297, and *Cold Metal Process Co.* v. *United Eng. & F. Co.*, 351 U. S. 445, 100 L. Ed. 1311, and a mere order separating issues for trial (173a and 174a) does not make such order final, *Atkins Kroll (Guam) Ltd.* v. *Cabreras* (C. A. 9th, 1960), 277 F. 2d 922.

District of Kentucky. On June 25, 1966, eleven days before the trial, Respondents filed their Motion for Summary Judgment (14a). On the morning the trial was to begin the Court elected to hear arguments on the Summary Judgment and decided that Summary Judgment would be granted. A request for "Findings of Fact and Conclusions of Law" was made to counsel for Respondents by the Court and this was tendered by Respondents on July 21, 1966 (15a, 297a-309a). Thereafter on September 7, 1966, the District Court filed his "Memorandum Opinion-Judgment Dismissing Complaint and Amended Complaint" (309a-322a; App. A 39-52) which is identical to the Respondents' tendered "Finding of Fact and Conclusions of Law" on the antitrust issues with insignificant exception. The Court's Memorandum Opinion was modified on October 5, 1966, ordering the Affidavits of Kenneth L. Anderson and Herman Miles to be filed (348a). A separate Judgment was entered dismissing Petitioner's suit on September 8, 1966 (16a, 322a), and the Notice of Appeal was filed on October 6, 1966 (17a, 770a).

This cause was briefed by the parties and subsequently argued on December 5, 1967 before the Sixth Circuit Court of Appeals.

On April 26, 1968, the Sixth Circuit Court of Appeals without opinion entered an order affirming the District Court judgment based on the District Court's Memorandum Opinion (App. A 53). The Petition for Writ of Certiorari was filed on July 18, 1968 and granted on October 14, 1968.

Summary of Argument.

Petitioner, Fortner Enterprises, Inc., plaintiff below, filed suit against Respondent United States Steel Corporation and its wholly owned subsidiary, U. S. Steel Homes Credit Corporation, alleging violations of Section 1 and Section 2 of the Sherman Act.

The underlying element of both charges involves loan agreements between Petitioner and the Credit Corporation which required Petitioner to build in its subdivision prefabricated houses manufactured and sold by the Homes Division of U. S. Steel as a condition to the loan of money for land acquisition and development. The loans were made to expand the sales of U. S. Steel and were a "tool" used to bait Petitioner and others into signing agreements committing them to purchase the U. S. Steel homes. The terms of the loans were unusual and unique at the time and unavailable elsewhere. This made such an economically attractive situation that Petitioner was compelled to accept the tying arrangement to obtain the loans. Thereafter the building program was started and the prefabricated houses had many defects resulting in poor sales and a bad reputation for the subdivision. Petitioner sought relief from the requirement to purchase from U. S. Steel but was emphatically rebuffed and threatened with foreclosure. After the second rebuff, this suit was filed.

The tie-in itself is admitted and is not in dispute. Economic power over the tying "product" is found in the unique terms under which the financing was offered

to Petitioner. A not-insubstantial amount of interstate commerce in the tied product, prefabricated houses, is found in the $678,900.00 of purchases of prefabricated houses which Petitioner made or was obligated to make from U. S. Steel.

The District Court rejected Petitioner's evidence or found it of no import or ignored it and entered Summary Judgment for Respondents. The evidence in the record either created issues of fact or established liability on the part of Respondents as a matter of law.

The evidence establishes a conspiracy between U. S. Steel and U. S. Steel Homes Credit Corporation to establish this and many other illegal tie-in agreements through the use of such loans, for the purpose of increasing U. S. Steel's share of the prefabricated house package market. This conspiracy is a violation of Section 1 of the Sherman Act and is also a conspiracy to monopolize in violation of Section 2 of the Sherman Act.

Summary Judgment procedures in antitrust cases involving charges of *per se* violations and conspiracy are and should be frowned upon and not allowed. The District Court erred in granting summary judgment and the case should be reversed and Petitioner granted a trial and full hearing.

ARGUMENT.

I. May a Federal Court in an antitrust suit charging a contract, combination and conspiracy to restrain commerce and an illegal tie-in agreement in violation of Section 1 of the Sherman Act and a conspiracy to monopolize in violation of Section 2 of the Sherman Act dismiss such a suit through Summary Judgment procedures when ample evidence was in the record to support all elements of the charges as set forth in the established cases?

The decision by the Sixth Circuit Court of Appeals to affirm the District Court's Opinion without giving the parties the benefit of an opinion significantly undermines the furtherance of antitrust enforcement by private litigation. There was a proper demand for jury trial in this case (56a), but the District Court took it upon himself to evaluate the evidence and dismiss Petitioner's suit on Respondents' Motion for Summary Judgment. The District Court actually acted as a trier of facts and the Court of Appeals has countenanced this action by its affirmance. There are significant questions of law and fact which appear in the record which should have precluded a Summary Judgment first sought eleven days before trial, and after four years of preparation.

To illustrate the erroneous nature of the proceedings on the Summary Judgment in this case, you need merely look at the "Findings of Fact and Conclusions of Law" (297a-309a) tendered by Respondents at the request of the District Court to realize that the Court was acting as a trier of facts. The District Court adopted those "Findings of Fact and Conclu-

sions of Law" verbatim on the antitrust issues and simply changed the title to "Memorandum Opinion-Judgment Dismissing Complaint and Amended Complaint" (309a-322a; App. A 33-46). This Opinion takes every *fact* most favorable to Respondents and uses those facts to support the dismissal and in the process ignores or brushes aside the evidence of the Petitioner. This is directly contrary to the principles laid down by this Court in *Poller* v. *Columbia Broadcasting System,* 368 U. S. 464, 7 L. Ed. 2d 458, 82 S. Ct. 486.

The issues presented in Petitioner's Complaint and evidence present serious questions of violations of Sections 1 and 2 of the Sherman Act. The Respondents were charged with ". . . a contract, combination and conspiracy in unreasonable restraint of and to monopolize . . . interstate trade and commerce in prefabricated houses and their component parts . . ." (21a). The Complaint goes on to specifically allege a conspiracy and concert of action to use the financing power of the Respondent Credit Corporation as a means of forcing dealers such as and including Petitioner to purchase the prefabricated houses of Respondent U. S. Steel (21a). The Complaint goes on to allege threats of foreclosure on the mortgages on Petitioner's property held by the Credit Corporation if Petitioner did not abide by the terms of the loan agreement requiring it to only purchase and build on said property U. S. Steel prefabricated homes (22a).

The loan agreement in paragraph 2. b. specifically obligates Petitioner as borrower to ". . . erect on

each of said Lots . . . a prefabricated dwelling house manufactured by United States Steel Homes Division, United States Steel Corporation" (26a).

Respondents have admitted over and over again that the Loan Agreements tied the purchase of the house packages to the lending of money for land purchase and development and the District Court throughout his opinion acknowledges that this was a tie-in contract.

What the District Court then proceeded to do was *evaluate* evidence and *misapply* the pertinent Supreme Court decision in finding as a matter of law no violation.

Throughout this case we have gained the impression from the District Court and the panel of judges who heard the oral arguments in the Sixth Circuit that we are attacking the use of financing or credit as it is normally used in the economy. This we definitely are not doing. Selling to customers on credit at all levels of business is an essential foundation of our economic structure. What we are attacking is the unusual use of credit under unique terms not available elsewhere as bait to get a borrower to sign loan agreements and mortgages which require that a third company's product be purchased which has no contractual relationship with the lender or borrower and no relationship to the security given the lender with threats of foreclosure on the mortgages if the products of the third party are not purchased and used. The day to day normal credit transaction certainly does not involve the type situation of which we do complain.

A predominant feeling that has been expressed at the oral arguments before the District Court and before the Sixth Circuit by the respective judges is that money when offered to finance a project under unique and unusual terms which cannot be obtained elsewhere cannot be used as a tying device. The attitude or feeling seems to be that one cannot accept such money under such conditions and later complain that restrictions under which the money is taken violate the anti-trust laws. While not expressed in such terms, this is merely another way of applying the *in pari delicto* doctrine. This inference that it was not quite right for Petitioner to file this suit permeates the District Court's memorandum Opinion (App. A 33-44) without it saying so directly.

This very proposition was argued by Respondents in their Brief before the Sixth Circuit of Appeals even though the District Court had rejected their tendered Amended Answer the morning trial was to begin (15a). The argument was stated by Respondents in said Brief as follows:

> "In the abstract, it ill behooves Fortner Corporation when the real estate market got slack, to turn on its benefactors who initially gave it a competitive advantage over other borrowers obtaining money through normal banking channels. It is this situation which gave rise to the tendered defense of pari delicto (39b) which the lower court did not entertain. The basis for this defense is Crest Auto Supplies, Inc. v. Ero Manufacturing Company, 360 F. 2d 896 (1966), decided May 20, 1966. Our pleading setting up this pari delicto

defense and grounded and on this authority was served on opposing counsel by mail, June 10, 1966."

Unfortunately we did not have at the District Court level or even in time for a Petition for Rehearing before the Sixth Circuit this Court's Opinion in *Perma Life Mufflers, Inc., et al.* v. *International Parts Corp., et al.*, 88 S. Ct. 1981, 20 L. Ed. 2d 982, handed down on June 10, 1968. In that case the franchise agreements between the plaintiffs and defendants imposed a number of restrictions including terms barring plaintiffs from purchasing from other sources of supply and tying the sale of mufflers to the sale of other products in the Midas line. The District Court gave Summary Judgment for the defendants and the Sevenuth Circuit Court of Appeals affirmed on the basis of the *in pari delicto* doctrine and on the basis that wholly controlled corporations cannot conspire, as was charged. This Court strongly disagreed and reversed.

In *Perma Life Mufflers, supra,* this Court anlayzed some of the evidence in the record including the fact that plaintiffs had attempted to obtain relief from the full line forcing and tying restrictions concerning the higher priced Midas line and had been adamantly refused and holds that such evidence establishes that the *illegal scheme* was forced upon plaintiffs. This Court also holds that the separate corporate defendants by availing themselves of separate corporate identity could not save themselves from the conspiracy charge even though there was common ownership.

Petitioner is firmly convinced that the Sixth Circuit would have reversed if the *Perma Life Mufflers* case, *supra,* had been available since the facts are similar and this Court finds such similar scheme to be illegal and sends that case back for trial.

In the present case Petitioner, Fortner Enterprises, Inc., was offered by Credit Corporation unusual and unique financing for land purchase and development, which could not be obtained elsewhere (Affidavit of Fortner, 29a; Affidavit of Horn, 294a), to induce Petitioner to agree to buy the prefabricated house packages of U. S. Steel and erect them in Petitioner's subdivision. There is ample proof in the record that Respondents conspired to do this insofar as Petitioner was concerned as well as to all others who borrowed money from Credit Corporation and that this was a principal means U. S. Steel had of getting a captive market and thus eliminating its competition. The Respondents have not argued or pled that the restrictions were reasonably necessary to ensure repayment. What they do say is that the restrictions would be eliminated and the mortgages on Petitioners' property released if Petitioners would pay them off.[2] The District Court accepted this argument (314a; App. 37, 39). This is merely an extension of the *"in pari delicto"* argument. This is the same as any of the illegal tie-in cases decided by this Court. The contracts could be cancelled and the restrictions thereby lifted, but this Court has

[2]This is not accurate since the mortgage (44a) requires Petitioner to perform each undertaking of the Loan Agreement and the Loan Agreement requires the erection of the U. S. Steel homes (26a).

never accepted such an argument and it is clear in the *Perma Life Mufflers* case, *supra*, why this is so. See also *Simpson* v. *Union Oil Company*, 377 U. S. 13, 12 L. Ed. 2d 98, 84 S. Ct. 1051.

The termination of a restrictive agreement does of course remove the restrictions, as Respondents argue. For example, if the dominant synthetic detergent brand were used as a tying product to force sales of a new or poor selling brand to grocers, some of the grocers could elect to do without the dominant tying brand and be relieved of the restriction. But this would be materially injurious to those making that election. The tying restriction was originally accepted to avoid such injury.

In the present case, the very nature and import of the evidence in the record is that Petitioner after the reputation of its subdivision began to go bad could not even have obtained the funds to pay off the Credit Corporation. Our case is therefore more extreme than the typical tie-in situation.

In the present case when the burden of the restrictions became known, Petitioner, through its President A. B. Fortner (290a), also tried on at least two occasions to formally obtain relief from such restrictions and was adamantly refused and told that there would be foreclosures if the houses of U. S. Steel weren't bought and built. The U. S. Steel product was defective (118a-128a, 290a-293a), in addition to being higher priced than that obtainable from other sources of supply (349a-353a).

Since the Sixth Circuit affirmed on the basis of the District Court's Memorandum Opinion (App. A 33-46), we must focus our attention on that opinion.

The District Court brushes aside the charge of conspiracy under Section 1 of the Sherman Act by stating "That the defendants did or did not conspire to achieve the tie-in contracts is of no consequence at this time" (314a; App. 39). The District Court apparently felt that the case depended solely on the legality or illegality of the tying agreement (315a; App. 40). This case should have been reversed out of hand on this point alone by the Court of Appeals.

We need only look at *United States* v. *General Motors Corporation*, 121 F. 2d 376, cert. denied, 314 U. S. 618, to find a case where a conspiracy to violate Section 1 of the Sherman Act was charged and upheld. In that case General Motors conspired with its wholly owned subsidiary G.M.A.C. to force the G.M.A.C. financing services upon dealers for the financing of the dealers' wholesale purchases and retail sales of General Motors automobiles. In that case General Motors used its economic power over its dealers to force the G.M.A.C. financing upon them. In the present case the Credit Corporation has used its economic power in the form of loans not available elsewhere at all or under the terms offered to force the purchase of U. S. Steel homes on the borrowers. See also *United States* v. *Yellow Cab Company*, 332 U. S. 218, 91 L. Ed. 2010.

The District Court ignores completely the charge of conspiracy to monopolize under Section 2 of the Sherman Act. No mention of that claim is made any-

where in his opinion. The Petitioner has consistently argued this cause of action and never abandoned any part of same, yet this charge has never been understood. There is ample evidence in the record that the Respondents conspired to achieve an increased share of the prefabricated home business by means of their financing programs to the damage of Petitioner and others. The Credit Corporation was originally established to provide financing to dealer builders of U. S. Steel but it was understood at the time of formation in 1954 that it would not be used as a means to force sales to them (756a). But this purpose was changed in 1958 (763a, 764a), when the Credit Corporation, under the direction of U. S. Steel's Finance Committee began to make loans to effectuate a minimum distribution of 1,800 house packages without conformity to conventional patterns of lending. This program was continued through the time Petitioner was signed up (764a-766a). U. S. Steel even guaranteed Credit Corporation's losses in writing from such ventures (764a), and included Petitioner in the guarantee.

This conspiracy was not confined to Petitioner but the Court ignores the evidence of the extent of said conspiracy. The Vice-President of the Credit Corporation in his deposition admitted that all loan agreements with all dealers had the purchase of U. S. Steel homes tied to the loan (870a, 871a). The President of the Credit Corporation has admitted that the Credit Corporation made loans consistently to aid U. S. Steel in its sales program of homes and which loans were unusual when regular banking and financial principles

are applied (832a). He has also admitted that he, as President of the Credit Corporation, made the decision to put the tie-in clause in the loan agreements with the knowledge of and under the direction of U. S. Steel (838a, 839a, 843a), the other alleged conspirator.

An excerpt from the U. S. Steel sales manual (381a, 382a), illustrates the special financing program as used by Respondents. It is even pointed out that the Credit Corporation turned down good loans when they couldn't produce sales because this would not accomplish the purpose of U. S. Steel. This closes (382a) with the statement "Financing is simply one of several tools that we (U. S. Steel) have available for securing more business."

The conspiracy to monopolize is further illustrated by the extensive nature and use of the loans to obtain sales. 68% of house package sales in 1960 involved loan agreements with the tie-in provision (676a, 677a). In 1960 the Credit Corporation made loans of over $22,000,000.00 to achieve sales which amounted to about $4,000,000.00. The same pattern is present for 1961 and 1962. In 1961, 70% of sales or about $2,900,000.00 were achieved as a result of such loan agreements involving loans of $19,300,000.00. In 1962, 75% of sales or about $2,300,000.00 of sales for the first nine months were achieved as a result of such loan agreements involving loans of $19,280,000.00 made during the first nine months. This is the exercise of naked economic power of itself, but the record contains more.

These loans were unique not only to Petitioner but to the other customers to whom they were presented.

All of the loans made were not bankable loans (857a), which means that normal channels of funds were not available to such borrowers. The terms of the loans were most important to many of the borrowers including Petitioner. The Respondents according to their own admissions went far beyond any competition by making higher percentage loans in relation to equity at more advantageous rates to the borrower. For example, the U. S. Steel Sales Manual indicates that competition charged simple interest plus a 10% fee while the Credit Corporation charged simple interest plus ½ point fee (377a).

Empire Homes, a Louisville competitor of U. S. Steel, which priced its home packages lower than U. S. Steel to Petitioner (350a), did not have the economic circumstance to make such loans on such terms in 1960 (295a), and therefore was excluded from competition for Petitioner's business as were the many suppliers of building materials which could have been used to build conventional homes.

The evidence of conspiracy to monopolize was surely one of fact for a jury under *United States* v. *Consolidated Laundries Corporation,* 291 F. 2d 563, 573 (2nd Cir. 1961), which holds that "intent" is an element of the offense and that an appreciable part of interstate commerce is the subject of the conspiracy. The Court holds at page 572 that $523,168.00 worth of business (1% of all such service) was substantial interstate commerce affected regardless of the percentage involved. See also *United States* v. *Yellow Cab Co.,*

332 U. S. 218, 225-226, 67 S. Ct. 1560, 1564, 91 L. Ed. 2010.

The cases also hold that a conspiracy to monopolize may be established without proof that the conspirators acquired the power to carry out the object of the conspiracy and without proof that monopolization was achieved. *American Tobacco Co.* v. *U. S.*, 328 U. S. 781, and *U. S.* v. *Griffith*, 334 U. S. 100.

The evidence of conspiracy in violation of Sections 1 and 2 of the Sherman Act and its effectuation is present in the record from the mouths of the Respondents and their documents. Yet the District Court passed by this claim and did not consider it. Can it be justice to dismiss Petitioner's claim as if it did not exist? Surely this Court cannot allow such procedures to exist in the lower courts.

II. When large and wealthy companies such as United States Steel Corporation and its credit subsidiary U. S. Steel Homes Credit Corporation lend money to borrower under unique and unusual terms not available elsewhere to obtain mortgages and loan agreements which require borrower (Fortner Enterprises, Inc.) ". . . to erect on each of said Lots . . . . a prefabricated dwelling house manufactured by United States Steel Homes Division, United States Steel Corporation . . ." is there created an illegal tying agreement in violation of Section 1 of the Sherman Act?

We now turn to that portion of this case upon which the District Court did pass. We would repeat that the fact that the loan agreements contained a tie-in clause is admitted by Respondents and acknowledged by the District Court in his opinion. The District

Court and Court of Appeals have failed to properly apply the controlling Supreme Court decisions to the facts in the record and this is a compelling reason for the granting of this Petition. The misapplication and interpretation of the law concerning tie-in cases must be rectified by this Court for uniform interpretation of the Antitrust laws and for justice to this Petitioner.

The basic law on tie-in violations is found in *International Salt Company* v. *United States,* 332 U. S. 392, 92 L. Ed. 20, where lessees of salt processing machinery were required by their leases to buy the salt used in the machinery from International Salt Company. $500,000.00 of salt per year was involved in the tie-in. This Court held such amount of commerce in the tied product not insignificant nor insubstantial and found the leases *per se* violations of Section 1 of the Sherman Act as illegal tie-in devices.

Northern Pacific Railway Company v. *United States,* 356 U. S. 1, 2 L. Ed. 2d 545, then speaks of tie-in arrangements as follows at 2 L. Ed. 2d 550:

> "They are unreasonable in and of themselves whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a 'not insubstantial' amount of interstate commerce is affected."

Northern Pacific, supra, then given a very pertinent discussion of the *International Salt* case (2 L. Ed. 2d 552):

> "In our view International Salt Co. v. United States, 332 U. S. 392, 92 L. Ed. 20, 68 S. Ct. 12,

which has been unqualifiedly approved by subsequent decisions, is ample authority for affirming the judgment below. In that case the defendant refused to lease its salt-dispensing machines unless the lessee also agreed to purchase all the salt it used in the machines from the defendant. It was established that the defendant had made about 900 leases under such conditions and that in the year in question it had sold about $500,000 worth of salt for use in the leased machines. On that basis we affirmed unanimously a summary judgment finding the defendant guilty of violating § 1 of the Sherman Act. The Court ruled that it was 'unreasonable, per se, to foreclase competitors from any substantial market' by tying arrangements. As we later analyzed the decision, it was not established that equivalent machines were unobtainable, it was not indicated what proportion of the business of supplying such machines was controlled by defendant, and it was deemed irrelevant that there was no evidence as to the actual effect of the tying clauses upon competition.' Standard Oil Co. v. United States, 337 U. S. 293, 305, 93 L. Ed. 1371, 1381, 69 S. Ct. 1051.

"The defendant attempts to evade the force of International Salt on the ground that the tying product there was patented while here it is not. But we do not believe this distinction has, or should have, any significance. In arriving at its decision in International Salt the Court placed no reliance on the fact that a patent was involved nor did it give the slightest intimation that the outcome would have been any different if that had not been the case. If anything, the Court held the challenged tying arrangement unlawful despite the

fact that the tying item was patented, not because of it. 'By contracting to close this market for sale against competition, International has engaged in a restraint of trade for which its patents afford no immunity from the antitrust laws.' 332 U. S., at 396. Nor have subsequent cases confined the rule of per se unreasonableness laid down in International Salt to situations involving patents. Cf. United States v. Griffith, 334 U. S. 100, 92 L. Ed. 1236, 68 S. Ct. 941; United States v. Paramount Pictures, Inc., 334 U. S. 131, 156, 92 L. Ed. 1260, 1291, 68 S. Ct. 915; Times-Picayune Publishing Co. v. United States, 345 U. S. 594, 79 L. Ed. 1277, 73 S. Ct. 872."

The District Court stops at this point and interpolates the language of the above cases to mean that there must be monopoly power or a high degree of economic control in the market over the tying product. But these cases speak only of "sufficient economic power" over the tying product to restrain competition in the tied product. The later Supreme Court case of *United States* v. *Loew's Inc.*, 371 U. S. 38, 9 L. Ed. 2d 11, has further clarified the law on this point. In that case this Court held:

"Market dominance—some power to control price and to exclude competition—is by no means the only test of whether the seller has the requisite economic power. Even absent a showing of market dominance, the crucial economic power may be inferred from the tying product's desirability to consumers or from uniqueness in its attributes."

On that same page, footnote 4 states in pertinent part:

> "Since the requisite economic power may be found on the basis of either uniqueness or consumer appeal, and since market dominance in the present context does not necessitate a domination of market power in the sense of Section 2 of the Sherman Act, it should seldom be necessary in a tie-in case to embark upon a full-scale factual inquiry into the scope of the relevant market for the tying product and into the corollary problem of the seller's percentage share in that market."

The District Court ignored the *Loew's* decision (317a, 318a), and the Petitioner's evidence on this element. Petitioner's evidence was that the financing offered Petitioner by Credit Corporation was so unusual and unique that economic circumstances compelled the acceptance of the restraints in the loan agreements (Affidavit of A. B. Fortner, 290a), and such financing under such terms was not available elsewhere at that time (Affidavit of Horn, 294a). The President and Vice-President of the Credit Corporation admitted that their loans were to obtain business for U. S. Steel and were not loans which the borrowers could obtain from conventional sources (832a, 852a, 857a). Obviously this financing meets the test of the *Loew's* case, *supra,* and must be construed most favorably to Petitioner on a Motion for Summary Judgment. But what did the District Court say? He found as a matter of law (318a, App. A 47-48), that the uniqueness in terms was of no significance and that others

"could" have lent money to Petitioner on the same terms. But there is not one scrap of evidence in the record to support that conclusion. The evidence was that money under such terms was *not* available elsewhere at that time! (290a-293a, 294a).

Even if loans under the same or similar unique terms "could" have been obtained elsewhere, this Court in its analysis of the *International Salt* case, *supra,* in the *Northern Pacific* decision, *supra,* at page 552, has pointed out that it is not necessary to consider whether equivalent tying products were available.

One of the key issues then is the holding that loans under unique and unusually favorable terms cannot be a tying element of an illegal tying agreement. The opinion (318a; App. A 47) recognizes that the financing was unique to Petitioner but holds that it must be generally unique and attractive in the market place to result in the requisite economic power. No authority is cited for this holding and it flies in the face of the *Loew's* decision, *supra,* which finds the requisite economic power in the tying product's desirability to consumers or from uniqueness in its attributes, *United States* v. *Loew's, Inc.,* 371 U. S. 38, 45, 9 L. Ed. 2d 11, 18, and even more strongly in the Sixth Circuit's own decision in *Associated Press* v. *Taft-Ingalls Corporation,* 340 F. 2d 753, cert. denied 382 U. S. 320, where the A. P.'s Ohio wire service was found unique to Taft-Ingalls Corporation to the point that the requisite economic power was found. Clearly the Ohio wire service was not generally unique to all customers.

There was evidence in the record which would have at least raised a jury issue as to the general uniqueness of the special financing plans offered by the Credit Corporation. The Sales Manual described their loans as being on better terms than those of competitors.

Mr. Horn has testified that loans on such terms were not available to Petitioner or anyone else at the time they were made (294a). Again the District Court has merely accepted Respondents' facts and law and ignored Petitioner's evidence.

This decision and the Sixth Circuit's affirmance is contrary to the holding in *Trans-World Airlines, Inc.* v. *Hughes,* 332 F. 2d 602, 611 (1964), cert. dismissed 380 U. S. 248, 249, which holds that the pleading, which charged the defendant, Hughes Tool Company, with conditioning its financing to T.W.A. on T.W.A. only purchasing its airplanes from Hughes, on its face charged an illegal tying agreement under the Antitrust laws and stated a claim, thus establishing jurisdiction.

It is respectfully submitted that proper application of the applicable cases to the facts of record show that there was sufficient evidence of economic power over the tying device to at least submit the case to a jury trial.

III. Is a minimum of $678,000.00 of sales or obligations to purchase of a tied product a not insubstantial amount of interstate commerce to satisfy the second element of an illegal tie-in agreement and should the Federal Courts have applied a share of the market test to a case involving a tie-in agreement?

The District Court then goes into the second element of an illegal tying agreement (318a). Here the Court applies to the amount of interstate commerce restrained a relevant market concept, using as its authority an inapplicable case (319a). This case, *Tampa Electric Co.* v. *Nashville Co.*, 365 U. S. 320, was not a tie-in case and therefore did not involve the *per se* rule. It applied a relevant market test to a requirement contract. There was no tying of one product or service to another. It carefully distinguishes tie-in cases (365 U. S. 320, at p. 334), and states (365 U. S. 320, at p. 326), that the necessity of direct proof of economic impact of a tying contract is not required (share of relevant market affected), as is required when a requirements contract is being considered.

The District Court says that a tying contract must create a substantial restraint on interstate commerce in the tied product (318a). The law under the Supreme Court cases is that a "not insubstantial" amount of commerce must be restrained, *i. e.*, it must not be *de minimus, International Salt Co.* v. *United States, supra.* The Court recognizes that house packages were the tied product but refuses to consider dollar sales figures of house packages. Instead, the Court speaks of the number of acres of land restrained

in the context of a share of the market of land available, although this is not even the tied product.

This was a completely improper application of the law and facts again. All of the cases dealing with violations of Section 1 of the Sherman Act which involved illegal tie-in arrangements hold that a relevant market concept is not applicable., *International Salt, supra,* involved $500,000.00 of sales of salt restrained and this has been repeatedly held sufficient. The District Court has not even concerned himself with the restraint in the sales of house packages. It is uncontradicted in the record (241a), that Petitioner was obligated to purchase 219 house packages from U. S. Steel as a result of the transactions complained of. The record also shows that the least expensive house package Petitioner had to purchase cost in excess of $3,100.00 each (349a-352a), which means that on this transaction alone at least $678,900.00 of commerce was restrained. But the evidence referred to previously also shows that the restrictive loan agreements involved 68% of sales or $3,971,217.76 in 1960, 70% of sales or $2,823,383.50 in 1961, and 75% of sales or $2,289,819.00 in 1962.

Certainly when a Summary Judgment is involved this evidence cannot simply be ignored by the Court. Certainly it meets the proper tests of this Court's decisions and at least created a question of fact if viewed against Respondent's evidence about the number of acres of land involved.

Money is the source of power in this country. Money in the right quantity or under the right circumstances can be used to achieve almost any goal. The

use of money in a unique way can achieve an economic hold on an individual or company as great or greater than that hold achieved by control over a patented product, a franchise, copy-right or trademark and therefore our antitrust law should limit the indiscriminate use of money in the manner. Availability of money is a prime consideration and concern of our entire business community. No one questions the right of one lending money to obtain reasonable security for repayment. When restraints are imposed through the power of money which do not affect the security of the loan, these may or may not be illegal depending on whether there is economic coercion through the particular circumstances of the borrower to take the money offered. We can illustrate this principle as follows. If a particular Corporation A making and selling Product X in the United States has a Customer B buying $250,000.00 of Product X from it learned that that Customer B was in need of financing and could not obtain it at reasonable rates from other financial sources, then Corporation A could arrange directly or through a subsidiary or some lending institution to loan that Customer B the funds required at attractive terms for the customer. Adequate security could be obtained. If that Corporation A as a condition of that loan required that Customer B buy $750,000.00 of Product X from Corporation A, is this not achieving the very pernicious result the Sherman Act was designed to prevent. Competition for the sale of Product X to that customer is stifled, and customer B's free choice of lower price from others has been eliminated. Corpora-

tion A could also obtain new customers in this same manner.

Why should a company itself or especially through another have any more right to impose restraints upon Petitioner and others through a loan of money than they would be able to do under any other contract or arrangement? Petitioner submits that the right does not exist. *Goodyear Tire and Rubber Co.* v. *F. T. C.*, 381 U. S. 357, 85 S. Ct. 1498 (1965). Under the District Court's theory as adopted by the Sixth Circuit, a contract setting up the terms under which money will be loaned can impose a tie-in restriction for the benefit of a third party. The logical extension of that theory would be the allowance of resale price maintenance, prohibition of the borrower to engage in business elsewhere, or any other conceivable restraint through loan documents.

In the *Perma Life Mufflers* case, *supra,* the attraction of the Midas brand and advertising program was so great that the plaintiff through economic necessity accepted the restraints in the franchise agreement. In the present case the attraction of financing particularly on terms not available from other sources was so great that Fortner Enterprises, Inc., accepted the restrains in the loan agreements. The argument was made in *Perma Life Mufflers* that when plaintiffs voluntarily signed the contracts they barred themselves from suit. The same argument has been made by the Credit Corporation and U. S. Steel here. This Court has strongly disposed of that argument, finding it completely invalid. There was evidence of coercion which

the courts below in both cases ignored but which this Court indicates is of great evidentiary import. In *Perma Life Mufflers* the threat was to cancel the franchises, thus depriving plaintiffs of use of the Midas name and other benefits, but there was no threat that any of plaintiffs' property would be *taken*. In Fortner Enterprise's case the threat was to foreclose on the mortgages and to take or have sold Petitioner's property because Petitioner had been forced into an untenable position due to the tie-in agreement since the tied products were overpriced and defective. These were the very conditions which were created by the Respondent U. S. Steel, the beneficiary of the conspiracy and tie-in agreement.

CONCLUSION.

Petitioner submits that its evidence establishes as a matter of law an illegal tying agreement which is a *per se* violation of Section 1 of the Sherman Act and a conspiracy to enforce that agreement and to monopolize the sale of prefabricated houses in violation of Sections 1 and 2 of the Sherman Act. The law in these areas should be clarified and the *per se* nature of a tie-in agreement affirmed, since enforcement of the antitrust laws by private enforcement has been affected by the holdings of the District Court and the Sixth Circuit Court of Appeals.

The holding and order of the Sixth Circuit Court of Appeals affirming the District Court should be reversed with directions that the District Court's judg-

ment be reversed and set aside and that Petitioner be granted a trial.

We respectfully submit that if the evidence at the trial on the issues of liability are the same as is now in the record, then Petitioner would be entitled to a directed verdict on such issues, with only the question of damages to be resolved by a jury.

Respectfully submitted,

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[APPENDIX A]

MEMORANDUM OPINION—JUDGMENT DISMISSING COMPLAINT AND AMENDED COMPLAINT.

Preliminary Statement.

This is a civil anti-trust action brought under the Clayton Act, §§ 4 and 16, 38 Stat. 731, 737, 15 U.S.C. §§ 14 and 26, for alleged violation by the defendants of Sections 1 and 2 of the Sherman Act, 26 Stat. 209, 15 U.S.C. §§ 1 and 2. Although the complaint states that the action is instituted under 15 U.S.C. § 14, which is Section 3 of the Clayton Act, plaintiff now asserts that this was a typographical error. For the purpose of deciding the motion before the Court, this representation of the plaintiff has no bearing however in view of the court's opinion as set forth below.

The case is before the Court upon a motion for summary judgment for defendants, pursuant to Rule 56 of the Federal Rules of Civil Procedure and involves the legality of a provision in two loan agreements between the plaintiff, Fortner Enterprises, Inc. and U. S. Steel Homes Credit Corporation (sometimes hereinafter Credit Corporation), requiring plaintiff to erect a prefabricated dwelling house manufactured by United States Steel Homes Division (sometimes hereinafter Homes Division) of United States Steel Corporation (sometimes hereinafter Steel Corporation) on each of 219 lots in Jefferson County, Kentucky, with respect to which Credit Corporation agreed to loan money to plaintiff to assist in the acquisition and development of the property and the construction of dwellings. The first loan agreement, dated October 28, 1960, involved 187 lots, and was the subject of the plaintiff's original complaint, filed July 19, 1962. The second loan agreement, dated August 2, 1961, involved 32 lots, and was included within plaintiff's amended complaint, filed January 21, 1966.

Statement of the Case.

Plaintiff, in the early part of 1960 was a dormant corporation with a substantial (over $16,000) deficit. It was owned entirely by A. B. Fortner, Jr., of Louisville, Kentucky, with the possible exception of one share of common stock held by Mr. Fortner's wife. Until October 27, 1960, it was not authorized to engage in the building or real estate business. The defendant United States Steel Corporation had its manufacturing plant in New Albany, Indiana across the Ohio River from Louisville, Kentucky. There its Homes Division manufactured component parts for prefabricated dwelling houses. The component parts of prefabricated dwelling houses, sometimes called "home packages," are sold by the defendant Steel Corporation generally throughout the United States east of the Mississippi River and in a tier of states just west of that river. The defendant Credit Corporation is a wholly owned subsidiary of the other defendant Steel Corporation. Its sole business function is to furnish financial assistance to customers or dealers of the parent corporation's Homes Division, in instances in which they apply for such assistance and seem to be unable to obtain the same sort of assistance on reasonable terms from normal sources. The underlying purpose of the Credit Corporation's function is to enable its parent, in the sale of home packages, to compete with other building material manufacturers, sellers, lumber yards, brick factories and other prefabricated house manufacturers, who provide similar assistance to their customers.

With this background of the general situation, the court now turns to the precise point in issue which is whether the defendants, parent and subsidiary, allegedly "conspired to establish an unlawful tying agreement between the defendant Credit Corporation and the plaintiff Fortner Enterprises, Inc., which required the plaintiff to purchase and build homes manufactured and sold by U. S.

Steel Corporation in plaintiff's subdivision in violation of Sections 1 and 2 of the Sherman Act." See Paragraph 1, Plaintiff's tendered instructions furnished the court pursuant to pre-trial order. In the light of this succinct statement of the plaintiff's basic claim, the court now examines in more detail the uncontroverted facts surrounding the execution of the first question contract, dated October 28, 1960. Shortly prior to that date plaintiff was a dormant corporation, controlled by A. B. Fortner, Jr. and had a substantial financial deficit. The defendant Homes Division was in the business of selling home packages. Plaintiff had available to it property in Jefferson County, Kentucky, suitable for subdivision purposes. This property was readily available to plaintiff because of Mr. Fortner's interest in another corporation then holding title to same. The plaintiff however had no funds to purchase or develop land or purchase home packages or otherwise build homes or indeed engage in any business. There were ample funds available in Louisville, Kentucky during 1960 for borrowers. From local sources alone the figure exceeds $163,330,000. In addition to this figure $133,316,000 in real estate mortgages were recorded in Jefferson County, Kentucky in 1960. Credit Corporation had no monopoly or "corner" on money at that time, nor does plaintiff contend to the contrary. Mr. Fortner was not then disposed to provide plaintiff with funds from any other source, including a personal investment, but instead applied for money from the Credit Corporation with which to buy property from the other corporation in which it had an interest. Thereafter plaintiff, using funds also borrowed from the Credit Corporation completed or at least partially completed the development of that property. And finally, again using funds borrowed from the Credit Corporation, constructed homes on part of the property thus acquired and developed utilizing in the construction thereof home packages pur-

chased from the Steel Corporation. Plaintiff concludes in affidavits fufnished by it that all of this was to the sole advantage of the defendants. The court finds however that in this particular transaction, (as in most transactions), both parties to the transaction felt it would be to their mutual advantage. Certainly the plaintiff was not coerced nor compelled to enter into the contract about which it now complains. Prior to the execution of the first contract it was not transacting any business of substance and entered into the arrangement with the expectation that it would be profitable to it.

The particular transaction is evidenced by three types of written documents. There are notes which are evidence of the debts incurred or to be incurred as funds were advanced. There is a mortgage in recordable form and a loan agreement which is the tie-in contract about which plaintiff now complains. All of these three types of documents are part of the same transaction. Indeed the loan agreement on its face recites that these documents constitute the "agreement" between the parties. The loan agreement in substance requires that while there is money due the Credit Corporation from the plaintiff, the property encumbered by the mortgage shall be developed with single family dwellings utilizing as a component part thereof home packages purchased from the United States Steel Corporation, Homes Division. The property encumbered by the mortgage and hence subject to the provisions of the loan agreement consisted of approximately 55 acres in Jefferson County, Kentucky. At the time this contract was made, Jefferson County, Kentucky contained approximately 240,000 acres, of which approximately 171,484 acres were suitable for subdivision into single family lots or were then being so developed. In essence the arrangement between the plaintiff and the Credit Corporation is one of borrower-lender, with the lender imposing certain restrictions on the

plaintiff's property purchased with the borrowed funds, but only while the debt remains unpaid. For our purposes here, the principal restriction while the debt is outstanding is the requirement that plaintiff utilize home packages purchased from the Credit Corporation's parent, when it constructs dwellings on the 55 acres purchased and developed with funds obtained from the Credit Corporation. The loan agreement is not an exclusive dealing contract within the normal use of that term. Plaintiff is not prohibited from purchasing prefabricated homes from the Steel Corporation's competitors or building conventional homes or engaging in any other business, competitive to the defendants or not, except on the 55 acres here involved. The day following the execution of this loan agreement, plaintiff under a similar arrangement with defendants' competitors, could well have purchased additional property, developed it and built homes on it, in competition with the defendants. At any time, plaintiff could have liquidated the debt to defendant Credit Corporation and be relieved from all obligation to it, including the restriction or encumbrance affecting the 55 acres.

On October 31, 1960, plaintiff entered into a franchise contract with the Homes Division. But none of this transaction between the plaintiff and the defendant Credit Corporation affected in any way that franchise with the Homes Division. The Homes Division would sell home packages to anyone who could pay for same. It was not a requirement to become a franchise dealer or to buy home packages that any would be purchaser, including plaintiff, borrow money from the Credit Corporation. Nor was it a requirement if the would be purchaser, including plaintiff, needed to borrow money that it borrow money from the Credit Corporation. Nor would the plaintiff or any other franchise dealer lose his franchise because having once borrowed from the Credit Corporation, it liquidated that debt. In short, the transaction before the court is simply one in

which certain restrictions as to use were placed on 55 acres of land in Jefferson County, Kentucky, while there was an outstanding debt in connection with the purchase and development of that property. There is no general restriction on the plaintiff nor any change in the situation as a result of the debt's liquidation, except that all restrictions are removed.

The same general facts relate to the second of the two questioned contracts, which was executed October 2, 1961, except that there, only an additional 7.3 acres were involved and the plaintiff had been engaged in the development of the subdivision acquired with the proceeds of the first loan for about seven months.

No additional facts were suggested or offered at or prior to the hearing on defendants' motion for a summary judgment which would alter the basic facts outlined above. There can be no dispute as to the facts derived from the various contracts and documents since they speak for themselves. The size of the property restricted was not questioned. Therefore the court is compelled to the conclusion that the case is one for decision on summary judgment. That the defendants did or did not conspire to achieve the tie-in contracts is of no consequence at this time. It is the contracts themselves which give rise to and furnish the basis for plaintiff's claim. If these contracts do not meet the tests determining violations of anti-trust acts, then they can furnish no claim for damages for a violation of the anti-trust laws, regardless of any other damage, real or imagined, flowing therefrom. Those claims simply may have become claims for breach of contract or related claims but are not within the purview of the anti-trust laws.

Conclusions of Law.

The abandonment of a claim under the Clayton Act only serves to increase plaintiff's burden since that later statute is broader in its concept, and conduct which would

violate Section 3 of the Clayton Act need not violate Sections 1 and 2 of the Sherman Act. This proposition is found conversely stated in the closing paragraph of Tampa Electric Co. v. Nashville Co., 365 U. S. 320. This abandonment or "erroneous" complaint regarding Section 3 of the Clayton Act is of small consequence however since the court is of the opinion that the allegedly illegal tie-in contracts do not fall "within the broader prescription of § 3 of the Clayton Act" and hence do not violate the provisions of the Sherman Act on which plaintiff now professes to rely. Tampa Electric Co. v. Nashville Co., supra; Times Picayune Publishing Co. v. United States, 345 U. S. 594.

On its face, the complaint is at variance with the Exhibit Loan Agreement (the questioned contract) filed as an exhibit thereto. The complaint will be controlled and modified by the terms of the written exhibit on which plaintiff bases its causes of action. Consolidated Jewelers, Inc. v. Standard Financial Corporation, 325 F. 2d 31; Ingram v. State and Building Corporation, Ky., 309 S. W. 2d 169. It is desirable in a summary judgment proceeding to have the issues set forth in the complaint made clear. The complaint thus modified by its exhibit, alleges that a condition for borrowing money from the Credit Corporation is that plaintiff will use home packages purchased from the Steel Corporation in the construction of homes on the 55 acres in Jefferson County, Kentucky, bought and developed with Credit Corporation's fund while the debt is outstanding. Reference is made to the Findings of Fact hereinabove set forth.

The amended complaint likewise must be modified by the Exhibit Loan Agreement, which by reference is incorporated as a part of it.

It is these loan agreements which plaintiff claims are illegal tie-in contracts, violative of Sections 1 and 2 of the Sherman Act. The fact of conspiracy or lack of it, sur-

rounding or related to the execution of these contracts has no bearing on the matter at this point. If the contracts are illegal under the facts attendant thereto, then plaintiff has a cause of action and may then proceed to prove conspiracy. And if successful in this endeavor to prove the damage flowing therefrom.

The court will only discuss in detail the earlier contract, executed in 1960. It will not be necessary to discuss the later (1961) contract, since it is similar to the earlier contract and for the reasons herein stated, the court's views on the earlier contract apply with equal vigor to the second and later contract, brought into this case by an amended complaint.

Tie-in contracts have been the subject of both public and private litigation. By public, the court means litigation instituted by the United States Government in enforcement of the anti-trust laws and by private the court means actions such as we have here. The United States Government has taken no part here, even earlier by civil or criminal action as sometimes happens. Even though the anti-trust laws expressly provide for private redress if those laws are violated, it still must be borne in mind that the ultimate aim is public good, "for it is the theory of the anti-trust laws that the long run advantage of the community depends on the removal of restraints upon competition." Standard Oil of California v. United States, 337 U.S. 293. This is not to say that there are different standards between public and private litigation (unless expressly provided which is not the case here) in the general enforcement of the anti-trust laws, but clearly it is not the purpose of the anti-trust laws to furnish treble damages where there have been only ordinary breaches of contract, conspiracies to injure reputation or property, etc.

There are two distinct elements or parts of a tie-in contract, both of which must violate the anti-trust laws before

such a form of contract can be the basis for a claim under those laws. A contract may be offensive as to one element or the other, yet not furnish the basis for an anti-trust action. Both requirements must be met. These contracts "are unreasonable in and of themselves wherever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a not insubstantial amount of interstate is affected." Northern Pacific Railroad Co., v. United States, 356 U. S. 1. Phrased another way, to make a tie-in contract illegal, the offender must possess "monopoly power or, at the very least a high degree of economic control in the market for the tying service and" the tie-in result in a "substantial restraint upon competition in the market for the tied service." Centanni v. Smith & Son, Inc., 216 F. Supp. 330. See also International Salt Company v. United States, 332 U. S. 392 and Times-Picayune Publishing Co. v. United States, 345 U. S. 594. The court will discuss the elements of a tying contract in the order indicated. Here money from the Credit Corporation is the tying product and home packages sold by the Steel Company are the tied product.

Obviously and as indicated in the court's Statement of the Case, the defendant Homes Corporation does not enjoy a monopoly of, nor a patent on money. Plaintiff argues, because of its financial plight at the time it made the contract, Credit Corporation's agreement to 100% financing was so unique that this was tantamount to monopoly power or a high degree of control of the tying product. Credit Corporation's generosity to the plaintiff does not go to the availability of the tying product in the market place and obviously others, if they chose, could lend to plaintiff money on the same terms and conditions as defendant Credit Corporation. Simply stated, a plan or proposal for the generous use of the tying produce (money) is not equivalent

to economic power with respect to the tying product. The test set in the cited cases is not met simply by contending the proposal for the use of the tying product is more generous than others may propose. The unique feature of Credit Corporation's plan and its attraction for the plaintiff is not general and it must be general in the market place to fulfill the requirements found in the cited cases. Indeed many people may not find Credit Corporation's arrangement with plantiff attractive. They may not desire the restrictions or find them useful. If, however, Credit Corporation enjoyed monopoly or a high degree of economic control in the market for money, others would have no choice but to adopt the plan. The test is universal compulsion not a peculiar attraction for one corporation as here. This singular attraction does not create market dominance or economic control over the product in and of itself and "of course where the seller has no control or dominance over the tying product so that it does not represent an effectual weapon to pressure buyers into taking the tied item any restraint of trade attributable to such tying arrangements would obviously be insignificant at most." Northern Pacific Railroad Co. v. United States, supra. This principle leads logically to consideration of the second element required to be found in an illegal tie-in contract.

To be bad under the anti-trust laws the contract must also create a substantial restraint on competition involving the sale of the tied product (home packages). If the relevant market concept as to the restriction found in the contract would relate to the area in which the defendant Steel Corporation competed, comparison between the 55 acres affected and the total area in which the Steel Corporation competes in the sale of its home packages becomes ludicrous. Tampa Electric Co. v. Nashville Co., supra. Being more realistic, since plaintiff conducts only a local operation, the court feels the geographical comparison for the

effect on interstate commerce should be made between Jefferson County Kentucky, and the encumbered 55 acres. But even here the discrepancy between the restricted property and the portion of the county available for development is great. Only .00032% of the available area in the county is affected by the contract. To further lessen the strain, if any, on competitive restraint, the loan agreement does not prohibit plaintiff generally from purchasing competitive products from others and it permits complete competition when the indebtedness to the Credit Corporation is liquidated. All of this without effect on plaintiff's franchise contract with the Steel Corporation.

Hypothetical illustrations of possible situations under the present contract, as it affects competition, will demonstrate the weakness and minimal effect of it on competition. Suppose the Steel Corporation produced a markedly inferior product and was unable to sell it without some sort of a tie-in device and (here the court assumes Credit Corporation has a monopoly on money). The present arrangement captures for the defendants certain territory (55 acres) in Jefferson County, Kentucky, leaving to the general public 99.99968% of that county in which to build homes purchased from Steel Corporation's competitors. This could include purchases through the medium of the plaintiff itself since it was not generally restricted. Thus, both the general public and the defendant's competitors have practical freedom of choice in Jefferson County, Kentucky. A second illustration will indicate the fallacy of claiming that it is the market for single dwellings or even in a more restricted sense, prefabricated single family dwellings, from entering into the concept. Assume the absurd but legally possible situation in which Jefferson County, Kentucky's market for single family or prefabricated single family dwellings was only one such dwelling unit annually. In the situation before the court, the poten-

tial buyer of that single family dwelling unit from plaintiff, or from others in competition with plaintiff, or directly from suppliers in competition with the defendant Steel Corporation, or anyone, has 99.99968% of the county in which to locate the home and fulfill his needs. In summary, the restriction here fails to "suffer the qualifying disability" which is a "tendency to work a substantial—not remote—lessening of competition in the relevant competitive market." Tampa Electric Co. v. Nashville Co., supra.

For the foregoing reasons, the courts concludes as a matter of law that the contract fails to meet either of the requirements necessary for it to be illegal under the antitrust laws.

Other Matters.

The affidavit of Albert F. Reutlinger is ordered filed of record herein, there being no objection on the part of plaintiff.

Defendant's tender of an amended answer setting up a Fourth Defense, that of pari delicto, served by mail on plaintiff's attorney June 10, 1966 comes too late and this amended answer will not be permitted to be filed.

In view of the court's decision on defendants' motion for a summary judgment, it is not necessary that it consider or rule on other pending motions made by the defendants directed to the amended complaint, nor does it rule on any of the objections made by the defendants to certain exhibits which plaintiff indicated it would tender at the trial of the case.

Plaintiff's counsel, several days after the hearing on defendants' motion for a summary judgment, tendered his affidavit and that of Herman Miles, to be considered in connection with that motion. This is too late. These affidavits should have been filed prior to the day of the hearing to be considered. See Rule 56. They may not now be filed.

The content of these affidavits however, had they been considered, is such as would not affect the court's decision on the summary judgment.

During the course of the recent hearing, plaintiff suggested that the judgment entered January 15, 1964, in Action Number 4392-A, styled Fortner Enterprises, Inc. v. U. S. Steel Homes Credit Corporation was not final and would be appealed. The record discloses that this companion case arose out of a counterclaim by defendant U. S. Steel Homes Credit Corporation to obtain a judgment for the funds advanced and to foreclose the mortgage securing the debt then in default. After the issues were joined by reason of the counterclaim, this court entered an order separating the trial of the within anti-trust action from the mortgage foreclosure action. Thereafter, in the mortgage foreclosure action certain issues were raised and resolved by a judgment. This judgment finally and fully disposed of all issues between the two parties to Action Number 4392-A in this court, styled Fortner Enterprises, Inc., Plaintiff v. U. S. Steel Credit Corporation, Defendant. Judge Shelbourne, now Senior Judge of this court, entered the judgment in that foreclosure action. It is his opinion and belief, and in it the court concurs, that the judgment entered in that separate foreclosure action was a final judgment and subject to appeal from and after the date of its entry, since it disposed of all issues then pending between the parties to that separate action.

CONCLUSION.

Plaintiff's motion to have the affidavits of Kenneth L. Anderson and Herman Miles filed is overruled. They may be tendered.

Defendants' motion to have the court order its amended answer tendered July 6, 1966 filed of record is overruled. No order is entered on other pending motions, except on defendants' motion for a summary judgment. This motion

for a summary judgment is sustained, and the complaint and the amended complaint are dismissed, plaintiff to pay all costs.

James F. Gordon
Judge

A Copy: Attest
Martin R. Glenn, Clerk
By F. Allen
Deputy Clerk

September 7, 1966
Emphasis supplied.

JUDGMENT.

It Is Ordered And Adjudged that defendants' motion for summary judgment is hereby sustained; the complaint and the amended complaint are dismissed with prejudice, that the plaintiff take nothing, and that the defendants, United States Steel Corporation, and U. S. Steel Homes Credit Corporation recover of the plaintiff, Fortner Enterprises, Inc. their costs of action.

James F. Gordon
United States District Judge

September 8, 1966

[APPENDIX B]

No. 17546

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

Fortner Enterprises, Inc., - - Plaintiff-Appellant,

v.

United States Steel Corporation, and
U. S. Steel Homes Credit Corporation, - - - - - - Defendants-Appellees.

Before: Edwards and Peck, Circuit Judges, and McAllister, Senior Circuit Judge.

ORDER—Filed April 26, 1968.

The above cause coming on to be heard on the briefs of the parties, the transcript of the record, and the argument of counsel in open court, and the court being duly advised; now, therefore, it is hereby ordered, adjudged and decreed that the judgment of the District Court be and is hereby affirmed for the reasons set forth in the memorandum opinion of Judge James F. Gordon.

Entered by order of the court

(s) Carl W. Reuss
Clerk

[APPENDIX C]

Section 1 of the Sherman Act, 15 U.S.C. 1:

§ 1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided,* That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further,* That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof,

shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, § 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693; July 7, 1955, c. 281, 69 Stat. 282.

* * * * * * *

Section 2 of the Sherman Act, 15 U.S.C. 2:

§ 2. Monopolizing trade a misdemeanor; penalty.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, § 2, 26 Stat. 209; July 7, 1955, c. 281, 69 Stat. 282.

* * * * * * *

Section 4 of the Clayton Act, 15 U.S.C. 15:

§ 15. Suits by persons injured; amount of recovery.

Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. Oct. 15, 1914, c. 323, § 4, 38 Stat. 731.

* * * * * * *

Section 16 of the Clayton Act, 15 U.S.C. 26:

§ 26. Injunctive relief for private parties; exception.

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided,* That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission. Oct. 15, 1914, c. 323, § 16, 38 Stat. 737.

* * * * * * *

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IN THE

Supreme Court of the United States

October Term, 1968

No. 306

FORTNER ENTERPRISES, INC.,
Petitioner,

vs.

UNITED STATES STEEL CORPORATION and
U. S. STEEL HOMES CREDIT CORPORATION,
Respondents.

BRIEF FOR RESPONDENTS

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IN THE

Supreme Court of the United States

October Term, 1968

No. 306

FORTNER ENTERPRISES, INC.,

Petitioner,

vs.

UNITED STATES STEEL CORPORATION and
U. S. STEEL HOMES CREDIT CORPORATION,

Respondents.

BRIEF FOR RESPONDENTS

Questions Presented

1. Will the grant of summary judgment dismissing a treble damage antitrust action be reversed where the plaintiff has completed discovery, states that the evidence includes "all of the pertinent material" to its cause, asserts that on such evidence it is "entitled to a directed verdict" on the issues of liability, disputes no material fact and argues here a new theory of its case never urged before either the District Court or the Court of Appeals?

2. Where a seller of prefabricated houses finances land acquisition and development and home construction in a single 55 acre subdivision of 219 lots for a buyer entering the housing development business upon the condition that the seller's houses be purchased for each lot only as long as the money advanced has not been repaid, is there "an illegal tying agreement which is a *per se* violation" of the Sherman Act in that the financing is "unique" to the buyer because "not available elsewhere at all" or on as favorable terms, the most substantial amount of commerce affected in any year amounting to 55 houses totaling $189,002 (70 houses totaling less than $250,000 over three years)?

Statement of the Case

The complaint in this action, as amended, alleges violation by the defendants of Sections 1 and 2 of the Sherman Act (c. 647, 26 Stat. 209, as amended, 15 U.S.C. §§1, 2). It alleges a conspiracy by the defendants to force plaintiff and others to purchase defendants' prefabricated houses as a condition to obtaining financing. The complaint alleges that the houses furnished plaintiff were defective, that because of the defects plaintiff was able to complete only 70 of 219 contemplated houses, that defendants thereafter foreclosed on the financed property, and that plaintiff has been damaged to the extent of (1) the cost of repairing the defects, (2) being delayed in completion of the planned homes so that it could not go forward with its development, (3) losing profits on both the houses built and those not built, (4) having its reputation as a builder irreparably damaged because the homes built were in-

ferior, (5) the sale of its property on the foreclosure at less than its fair market value, and (6) the purchase of defendants' houses at "unreasonably high prices." Under Sections 4 and 16 of the Clayton Act (c. 323, 38 Stat. 731 and 737, as amended, 15 U.S.C. §§14, 26), plaintiff seeks to treble these alleged damages (18a-55a, 239a-268a).

Defendants sought and the District Court granted summary judgment dismissing the complaint, and the Court of Appeals for the Sixth Circuit affirmed *per curiam*. In essence, it was plaintiff's claim below that it and others were "coerced" by "economic necessity" to buy defendants' prefabricated houses because the financing made available by defendants was either not available at all from other sources or was not available on as favorable terms. Therefore, plaintiff claimed, defendants had conspired to restrain trade and to monopolize the house market by offering "unique" financing conditioned upon the purchase of their houses, such a tying arrangement thus constituting a *per se* violation of the Sherman Act.

There is factual dispute between the plaintiff and the defendants as to the alleged defects in defendants' houses, the reasons for plaintiff's abandonment of its housing development, and the causes for any losses it allegedly incurred. Thus, of a total of 70 houses purchased from defendants, plaintiff claims the delivery of faulty and defective materials for each and every one and that defective components caused delay in plaintiff's construction of each of the 70 houses (116a-118a, 134a-137a). None of the facts disputed in this area, however, is material to the antitrust issues comprehended by the complaint and the judgment

below. At most, these facts might be pertinent to a common law claim for breach of contract, breach of warranty or other non-antitrust cause of action.

Defendants in this statement set forth the evidence of record in considerable detail to demonstrate that, drawing all reasonable inferences in favor of plaintiff as mandated by Rule 56 of the Federal Rules of Civil Procedure, neither below nor in its brief here has plaintiff set forth evidence showing that there is a genuine issue as to any fact material to its antitrust claim. Moreover, the detailed record treatment is offered to facilitate this Court's independent review apart from the opinion of the District Court, since the decision of a lower court will be affirmed if the result is correct even though the decision relies upon wrong grounds. *Helvering* v. *Gowron*, 302 U. S. 238 (1937).

Defendant United States Steel Corporation, through its Homes Division, manufactures component parts for prefabricated houses, selling these "home packages" in various states primarily through franchised dealer-builders like the plaintiff. It also has a wholly owned subsidiary, U.S. Steel Homes Credit Corporation, founded in 1954 with a paid-in capital not in excess of $2 million generating an estimated fund of $12 to $16 million available for loans[1] (753a-759a).

The purpose behind the establishment of the Credit Corporation was, by furnishing financial assistance to

1. Credit Corporation's total funds available for lending have varied from $6 to $9 of funds borrowed from outside sources for every dollar of invested capital or intercorporate (parent-subsidiary) debt (830a).

Homes Division dealer-builders unable to obtain the same sort of assistance from normal sources, to compete with other prefabricated house manufacturers, lumberyards, brick factories and other building material manufacturers who provide such assistance to their customers (756a-758a, 821a, 828a, 851a-852a).

The Credit Corporation makes its financing available solely to franchised dealer-builders of the Homes Division and solely for the purpose of constructing Homes Division houses.[2] To make it possible for these dealer-builders to construct such houses, the Credit Corporation will also finance the acquisition of unimproved real estate to be held for future subdivision development, the acquisition of real estate already subdivided, or the improvement and development of real estate as subdivisions (164a, 166a).

The Credit Corporation's loans are all conditioned upon the construction of Homes Division houses and are made against mortgage security with provisions for partial releases of individual building lots when improved with such houses. The uncontradicted evidence, however, is that the borrower may at any time terminate his obligation to use Homes Division houses simply by retirement of the loan. No loan imposes any continuing requirement to use Homes

2. The president of the Credit Corporation testified: "The decision to get into a financing operation to aid the Homes Division contemplated that loans would be made where it served to supplement —augment—the sales of the Homes Division. So that, as long as a loan was outstanding, we expected that the U. S. Steel Homes products would be used. Otherwise, there was no reason for the loan, because we're not in the financing business, per se. * * * [T]he Credit Corporation is not in the general lending business, and * * * every loan it makes is designed to aid in the distribution of [the Homes Division] product" (838a-839a).

Division houses after the loan is retired or in connection with property which has not been acquired, developed or improved with the proceeds of the Credit Corporation loan (167a-168a, 838a, 880a). In fact, dealer-builders have set up programs with the Homes Division, borrowed the money from the Credit Corporation, developed lots and then offered the complete development to an investor, paying off the Credit Corporation and never building a Homes Division house[3] (377a).

The Credit Corporation's borrowers "are not prime financial risks" and its financing is not "on strictly sound banking principles" in the sense that none of its loans is a "bankable loan," and if the Credit Corporation had an application for such a loan it would refer the dealer-builder to a bank (857a). The uncontradicted evidence, however, is that most of the Credit Corporation's loans, even though not "bankable loans," have been made on the basis of sound and reasonable financial practices (832a). When its regular program of loans has been inadequate to enable the Homes Division to attain minimum national distribution levels,[4] the Credit Corporation has been authorized

3. Because of such activities by dealers, sometime after plaintiff and defendants effected their original financing arrangements in October, 1960, the Homes Division began asking for collateral or contingent liability 5% notes not to exceed two years. Such notes would not, however, bear interest or become effective unless the dealer failed to purchase the number of houses necessary to retire his loan. For example, when plaintiff, in 1961, sought and obtained a second loan commitment totaling $462,400 from Credit Corporation, a collateral note in the amount of $2,950 (equal to 5% of the Land Note of $59,000) was taken. As the vice president of the Credit Corporation testified, "* * * [w]hen a man uses our facilities, or intends to use them, simply as a convenience to himself, to make a profit in land development and speculation, we feel we are entitled to some additional compensation. * * *" (244a, 377a, 866a-870a)

4. *E.g.*, a target of 1800 units in 1959 (763a).

since 1958 to offer and occasionally has offered special financing to selected dealers "without conformity [to] conventional or conservative patterns but within the bounds of prudent business judgment" (763a-766a, 832a-833a). Again the uncontradicted evidence is that this special financing was responsive to competition in the building industry requiring the acceptance of greater risks by lumberyards, brick factories, prefabricators and others (858a).

All financing by the Credit Corporation is individually negotiated with each dealer-builder in the light of his particular circumstances (827a-828a, 853a). The differences between the Credit Corporation's "regular" and "special" financing operations apply solely to those loans made for land acquisition and development, not loans made for construction (366a-385a). As plaintiff states, the record shows "that the ordinary financing program on land acquisition and development was a 60% loan * * *"[5]

5. The Homes Division Sales Manual states: "So far * * * we have discussed: Permanent financing which finances our product for the home owner; construction financing which finances the construction of our product for the dealer. In all cases to this point we have financed our product, and now we have to finance a piece of ground where we hope and expect to build our product, but, more often than not, the Credit Corporation has to disburse a sizeable amount of money before we even ship one model. There are no buyers waiting in line, there are no houses to sell, there's just a piece of raw earth. So it is, from our standpoint, a higher risk loan and must be scrutinized much more closely than any other type. * * * The Credit Corporation can make loans in an amount up to 60% of the combined cost of land and the development of that land or a portion thereof. In other words, if the total estimated cost is $100,000—to use round figures—the Credit Corporation can lend up to $60,000 to develop this land, the dealer putting his $40,000 in first and, I might add, the Credit Corporation taking their $60,000 back out first. As a more general rule of thumb, if the dealer has clear title to the land, the Credit Corporation can make the full development loan. This would usually be classed as standard unless for some reason the development costs were too far out of line. * * * There will be two notes—one for

(Br.,[6] p. 8). The special financing was described by the president of the Homes Division as follows:

> "Beyond the 'regular' program of financing assistance offered to qualified builders and negotiated by the Credit Corporation, there exists a program of 'special' assistance which provides a greater amount of interim financing participation in selected markets with selected dealers. Fortner represents one of the latter. In these cases our sales department, in an attempt to obtain distribution in a new market or to supplement distribution in an existing market, will discuss the possibility of a building program using U. S. Steel Homes with a dealer who is believed to have the necessary qualifications to be successful. Frequently the builder states a need for substantial interim financing to support the program and after commercial evaluation and a satisfactory preliminary check of credit and reputation, a recommendation is forwarded to U. S. Steel Homes Credit Corporation that negotations be undertaken to arrive at a satisfactory basis for financing assistance consistent with the conditions which exist in each instance. In certain cases where Credit Corporation states that the amount of assistance provided in relation to the value of the security is beyond the normal limits of a purely financial transaction, Homes Division underwrites the ar-

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the land development loan portion and one for the construction loan portion—secured by one mortgage on the land. * * * So, to recap, a standard land deal means simply—up to 60% of the combined cost of land and development or if the dealer owns the land, 100% of the development cost. This on a one or two year basis at ½ of 1% fee plus 6% interest. Loan to be paid back in 75% or fewer of the lots to be developed dependent upon a release value per lot based usually on the estimated average valuation anticipated from FHA or VA. * * *" (373a-379a)

6. "Br." references are to the plaintiff's brief filed with this Court. "CAB" references are to plaintiff's principal brief before the Court of Appeals.

rangement so as to protect Credit against potential losses. Our agreement with Fortner is in this category'' (362a-363a).

Of the special loans actually made to others than plaintiff, the sole evidence is that ''each one [was] a little different'' and was based upon the dealer's insistence that he needed assistance beyond the regular program (381a). Further, the Homes Division Sales Manual emphasized that 100% loans for land acquisition and development should not be offered to new dealers.[7]

As plaintiff states, it ''was a corporation in existence in 1959 principally owned by Mr. A. B. Fortner * * *''[8] (Br., p. 3). Mr. Fortner ''had available in 1959, through another corporation in which he owned an interest, certain land in Jefferson County, Kentucky [Louisville] suitable for subdivision purposes.'' He states that he was contacted by Homes Division representatives ''concerning the building of prefabricated homes * * * on said land * * * and was told that very attractive financing was available from * * * Credit Corporation'' (289a-290a, 438a). At

7. ''It is always best, if possible, to try to find out what the dealer requires and, if possible, adjust our program to meet his needs, rather than to 'lay out' a set of rules which might not fit and might cause the dealer or prospect to lose interest. Further, you might say to him that we would go up to 60% and he only requires 40 or 50%, in which case he might try to get 60%. If you are pinned down to a definite answer, you might then just spell out the standard terms and then tell him, 'if this doesn't fit your program, you tell us what is needed and we'll see what can be done.' You should make it clear to a new or prospective dealer who is applying for his first loan from the Credit Corporation that they will not consider 100% of the security. That is, the dealer must have some equity in one form or another in the deal. * * *'' (381a)

8. Mr. Fortner owned all of the outstanding common voting stock of plaintiff other than one share owned by his wife (113a).

that time the Homes Division had a wholly negligible position in the Louisville market.[9] Homes Division was interested in Mr. Fortner and plaintiff as a means of expanding its entry, broadening its distribution and trying to improve its participation in that local market (801a, 809a, 839a-840a).

Mr. Fortner originally proposed in December, 1959 to transfer to the plaintiff 99 lots of the land held by his other corporation. The existing equity in that land was $56,000, the current indebtedness for it was another $56,000 and the initial estimate was that the cost of development would be $96,000, so that $152,000 financing was required for the land. Even this first proposal for financing, calling for some equity on the part of plaintiff, was "definitely in the category of special financing * * *" (385a-387a).

At a meeting on January 6, 1960, Mr. Fortner "completely changed his proposal" and "indicated that the only way he would proceed in this undertaking would be on the following basis:" (1) Credit Corporation was to finance plaintiff's acquisition of 155 undeveloped lots from his other corporation at their full cost ($170,500) and Mr. Fortner's equity was to be 31 developed lots valued at $62,000; (2) Credit Corporation was to finance development of the 155 lots at a cost of $139,500; and (3) Credit Corporation was to finance construction on the total of 186 lots for approximately $1,400,000 to be disbursed in stages as construction progressed and contracts were made for the sale of the houses (390a-392a). The president of the Credit Corpora-

9. Prior to the arrangements effected with plaintiff in 1960, the Homes Division's sales in Louisville were 13 houses at $60,178 in 1957, 2 houses at $12,261 in 1958 and none in 1959 (184a).

tion concluded that "the Fortner loan on the new basis is an extreme," and expressed concern as to whether the market would permit the dealer "to make a satisfactory return," which was essential to defendants' sale of houses[10] (634a).

Nevertheless, after insisting in March, 1960 that the proposed financing be on a two-year rather than one-year maturity basis, Mr. Fortner and his advisors were well satisfied with the arrangements and were unwilling to reduce "the loan by cutting back the number of lots * * *" (393a-394a). Even though this was the first real estate development undertaken by the plaintiff corporation, as plaintiff's interrogatory answers state, "Mr. A. B. Fortner and his personnel, by virtue of association with other companies, have had considerable experience in real estate development of the type which is the subject of this law suit" (138a).

The transaction between the parties was not finally effected until the fall of 1960 because Mr. Fortner's partner in his other corporation, which held the land, "decided that [the program] looked too good for him to relinquish his interest." Ultimately the partner decided to sell his interest to Mr. Fortner for $170,500 of the loan money

10. "[W]e should know, if possible, or at least have confidence that the dealer can make a satisfactory profit from the use of our product. With all our money out front, he has very little incentive to finish off a project. If his profits are not adequate or are not comparable to his prior experience, then we probably do not have a good loan. In making this statement, it is not the financial risks which are referred to, but rather the fact that the loan will not produce house sales. The worst thing that can happen * * * is an unsuccessful development. This precludes, in most cases, any other house sales in that area, because the one we have there has been unsuccessful" (634a).

advanced by Credit Corporation and the 187 lots were then transferred to plaintiff (395a-396a, 497a). In an affidavit, Mr. Fortner states that plaintiff was finally given "100% financing for the purchase and development of the land in question" (290a). Until that time, plaintiff had been dormant and had a deficit in excess of $16,000. Plaintiff's articles of incorporation were amended to permit it to engage in the building or real estate business just several days before it was franchised by Homes Division[11] and executed the financing arrangements with Credit Corporation at the end of October, 1960 (278a-279a, 295a).

The financing transaction between plaintiff and the Credit Corporation was evidenced by notes, a mortgage and a loan agreement[12] which provided, "This agreement, together with the notes and mortgage hereinabove described, constitute the entire agreement between the Borrower and Lender * * *" (36a). The notes were payable "on or before" specified dates and imposed no penalty for prepayment (47a-53a). The mortgage provided that upon payment of the notes "this conveyance shall thereupon become null and void" and the mortgage would be released of record (45a-46a). Nowhere does the agreement between these parties or any other evidence indicate that the loan

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11. The franchise agreement, terminable at will by plaintiff, merely authorizes purchase of Homes Division houses at prices in effect at the time of shipment for use in plaintiff's Golden Meadows Subdivision but does not restrict plaintiff from dealing with competitors or others as to houses in that subdivision or elsewhere (922a-926a).

12. 24a-53a. The total loan commitment of $2,055,300 was to be advanced according to specified progress provisions and called for interest of 6% per annum from the date of advance. A service fee of one-half of 1% ($10,275) was deducted from the principal.

agreement's conditioning of the financing upon the purchase of Homes Division houses for the mortgaged lots would survive repayment of the loans. Nor does the parties' agreement or any other evidence suggest that plaintiff was required to buy houses exclusively from the Homes Division or even to place its houses upon the mortgaged property once the loans were repaid.

Plaintiff's brief characterizes these 1960 financing arrangements as follows: "The negotiations proceeded sporadically until September, 1960. * * * Credit Corporation made very attractive offers of financing until they arrived at the point that they offered to provide maximum financing for land acquisition and development (290a). * * * This offer of financing was so unusual and unique insofar as Petitioner was concerned that through economic necessity it was accepted (290a)." Plaintiff's brief states further that the Homes Division "homes were not particularly attractive to" plaintiff (Br., pp. 5-6).

As far as the attractiveness of the houses, the cited portion of the record, an affidavit by Mr. Fortner, reads:

> "Affiant states that presentations made by the Homes Division as to the speed of erection and quality of the prefabricated home package made said product attractive to the plaintiff, but that the plaintiff would not have purchased said home packages but for the financial assistance offered by the Credit Corporation"[13] (290a).

13. Prior to the arrangements between the parties, Mr. Fortner and his associates attended a Homes Division seminar, visited its plant, and assembled cost figures on its product (386a). The Homes Division's Field Sales Manager, who discussed the program on several occasions with Mr. Fortner, was "convinced of his ability, enthusiasm and sincerity" (396a).

Nowhere in the record is there any evidence implying that Mr. Fortner or the plaintiff found the Homes Division houses unattractive or negative in any way until long after they entered into the program with defendants.[14] There is no evidence that they ever asked, or suggested that they would like, to take Credit Corporation's financing without the houses.

Throughout its brief, plaintiff, relying upon affidavits by Mr. Fortner and Mr. Edwin D. Horn, urges that not only was the financing extended by the Credit Corporation "unique" to plaintiff but "it was unique in financing circles generally in the Louisville, Kentucky area in 1960 * * *" and that "such loans were not available under the terms made at that time from any other source" (Br., pp. 6, 19, 24, 29-31). On this point, the cited affidavit of Mr. Fortner reads:

> "Affiant states that the ultimate offer of the Credit Corporation was to provide 100% financing for the purchase and development of the land in question. Affiant states that to his knowledge no such financial assistance was available to Fortner Enterprises, Inc. in 1959-1962 on the terms offered by the Credit Corporation from any other source. The offered financial assistance, particularly in terms of the 100% financing feature, was so unusual, unique as far as the plaintiff was concerned, and attractive that the plaintiff because of economic circumstances accepted the assistance offered, including conditions imposed by the Credit

14. Plaintiff's brief states, "In the present case when the burden of the restrictions became known, Petitioner, through its President A. B. Fortner (290a), also tried on at least two occasions to formally obtain relief from such restrictions and was adamantly refused. * * *" (Br., p. 20)

> Corporation that prefabricated homes manufactured by the Homes Division would be built in the subdivision" (290a).

Neither in Mr. Fortner's affidavit nor elsewhere in the record is there any showing of efforts made by him prior to the arrangements with the defendants to ascertain what financing or terms were available from other sources or the basis of his statement that "to his knowledge, no such financial assistance was available" (indeed, Mr. Fortner does not even claim that "his knowledge" was as of 1960 when the arrangements at issue here were effected). It is unclear whether plaintiff urges from this evidence the inference that financing on any terms was unavailable to it from other sources or the alternative inference that financing was available to it but on less favorable terms than negotiated with the Credit Corporation. This uncertainty is underlined by the statement in plaintiff's brief that "in the present case the Credit Corporation has used its economic power in the form of loans not available elsewhere at all or under the terms offered to force the purchase of U. S. Steel homes on the borrowers"[15] (Br., p. 21).

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15. During examination of the Credit Corporation's vice president by plaintiff's counsel, Mr. Anderson, the following colloquy took place:

> "Q. As a matter of fact, at that time, as at the time that these loans were made to Fortner Enterprises, consistent with your previous testimony here, it was and is quite obvious that financing could not be obtained from any other source to pay you off; isn't that correct? A. I can't answer that.
>
> "Mr. Reutlinger: Do you mean before or after the loan was made, and the property developed?
>
> "Mr. Anderson: I think the question is completely adequate.

(*footnote continued on next page*)

The affidavit by Mr. Horn, who is president of the Louisville Mortgage Service Company and who assisted Mr. Fortner in negotiating the financing arrangements with the Credit Corporation (393a), reads:

"Affiant states that as a result of his position with Louisville Mortgage Service Company in 1959-1962 and his contacts with the mortgage loan business in Jefferson County, Kentucky and the State of Kentucky during said period, affiant was and is familiar with the types of financing available in said area during said time. Affiant states that the type of financing package involved in the transaction between U. S. Steel Homes Credit Corporation and Fortner Enterprises, Inc., was unusual and unique during the period 1959 through 1962 in Jefferson County, Kentucky. The affiant further states that such a financing plan was not available

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"The Witness: It sounded a little more like a statement. I wonder if you could read that to me:

"Mr. Reutlinger: Property that is developed has more value than undeveloped property.

"Mr. Anderson: Would the reporter please read back the question?

"(The reporter read back the last question.)

"Mr .Anderson: I specified two particular times which I am talking about. If Mr. Dyas wants to answer the question in two parts, he is perfectly free to do so.

"A. (Cont.) At the time we made him the loan, could he have done it otherwise, and at the time he requested the concession, could he have done it otherwise; is that right?

"Q. Yes. A. Well, at the time, he said that he couldn't. He said that the reason he was coming to us was because he wanted to borrow this money to buy out a partner's interest in a subsidiary corporation. That was his representation to us. And if he could have obtained his financing elsewhere, then he simply misrepresented to us. We didn't know all the circumstances. We heard what he said. Now, at the time of this meeting, whether he could have refinanced, I certainly am not qualified to answer. I think he would be more able to refinance then, than before, having had the benefit of the incremental value of the improvements on the property." (880a-881a)

to Fortner Enterprises or any other potential borrower from or through Louisville Mortgage Service Company or from or through any other lending institution or mortgage company to this affiant's knowledge during this period. Affiant states that as a result of this type of financial assistance given by U. S. Steel Homes Credit Corporation to Fortner Enterprises, Inc., and others and somewhat similar assistance given by a few prefabricated home manufacturers or their affiliated companies in 1963 and subsequent years, Louisville Mortgage Service Company and other such organizations have been forced to offer to their customers similar 100% financing for purchase and development of land'"[16] (294a-295a).

Neither Mr. Horn's affidavit nor any other evidence offers enlightenment as to the kind of financing available from his company and others like it or whether such financing is on terms more or less favorable than "bankable loans" available from normal sources. Apart from the

16. To support the argument that financing comparable to that negotiated between plaintiff and the Credit Corporation was not available from any other source in Louisville, plaintiff's brief urges: "Empire Homes, a Louisville competitor of U. S. Steel, which priced its homes packages lower than U. S. Steel to Petitioner (350a), did not have the economic circumstances to make such loans on such terms in 1960 (295a), and therefore was excluded from competition for Petitioner's business as were the many suppliers of building materials which could have been used to build conventional homes" (Br., p. 24). This is wholly unsupported argument, however, for neither the cited nor any other portion of the record offers any indication that Empire or any other prefabricator or building material supplier was unable to or, indeed, failed to make available comparable financing and terms in 1960 or at any other time. And as the Horn affidavit shows on its face, Mr. Horn did not purport to speak as to available financing from such companies. Parenthetically, Empire's pricing in relation to that of the Homes Division is explained by the fact, attested to by plaintiff's general contractor, "that additional labor and materials to make the Empire Homes Corporation package comparable to that of the [Homes Division] B-1 Model would have been $1,034.75. * * *" (351a)

limitation of Mr. Horn's affidavit to the financing available from his company and other such organizations, its sole claim of "uniqueness," like that of Mr. Fortner's affidavit, is confined to the aspect of "100% financing for the purchase and development of land." The extent to which the Credit Corporation's financing of the plaintiff is claimed to be unique, therefore, must be measured against the loans granted for land acquisition and development, not the construction loans. Significantly, Credit Corporation's construction loan commitments to plaintiff, represented by Construction Notes No. 1 and No. 2, were $373,200 and $1,362,180, respectively, or a total of $1,735,380 (50a-53a). As to these loans, neither Mr. Fortner nor Mr. Horn claims "uniqueness."

The loan commitments for land acquisition and development, on the other hand, are represented by Land Notes No. 1 and No. 2 in the amounts of $88,000 and $231,920, respectively, or a total of $319,920 (47a-50a). Thus, if it is assumed, as plaintiff appears to urge,[17] that land financing was not available from any source on terms any better than the Credit Corporation's regular program of 60% of the cost of acquisition and development, then plaintiff got an additional $127,978 (40% of the $319,920 of Land Notes) it could not have obtained elsewhere. In terms of the entire financing commitment (Land and Construction Notes) negotiated with the Credit Corporation, plaintiff got $2,055,300 rather than the $1,927,322 which would have been

17. In its brief, plaintiff states, "That the financing under the terms and conditions offered Petitioner and many others was unique and unavailable elsewhere can be found in the Homes Division Sales Manual (374a), which indicates that the ordinary financing program on land acquisition and development was a 60% loan. * * *" (Br., p. 8)

available from sources not offering Credit Corporation's "unique" terms.

As previously noted, in specified circumstances the Credit Corporation requires Homes Division to guarantee or underwrite financing extended to dealer-builders. Such guaranties are required where the risk exceeds financial limits and instead is of purely commercial character.[18] High risk or marginal risk loans are included in the guaranty and are added or deleted as the condition of the borrower changes from time to time (815a-816, 833a). Of the original financing plaintiff negotiated with Credit Corporation, only Land Notes No. 1 and No. 2 ($88,000 and $231,920) were so guaranteed by Homes Division (443a).

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18. Plaintiff's counsel examined Credit Corporation's vice president as follows:

> "Q. What was the purpose of entering into this underwriting agreement between Homes Division and Credit Corporation? A. Well, the main purpose is this: Competition in the building industry has required the acceptance by lumberyards, brick factories, prefabricators and others, of longer and longer risks. We reached the point in the Credit Corporation some time ago that in order to compete we found—that is, in order for Homes Division to compete—we found that it was necessary to take risks which had to be classified as commercial rather than banking risks. And in those cases, then, we require the Homes Division to underwrite that risk as a commercial risk in the promotion of its business." (858a)

Homes Division's president testified that

> "* * * if it wished to recommend a loan be made to a builder-dealer, and subsequently the Credit Corporation determined that the financial aspects of such a loan indicated a relatively high risk because of the extent of capital which the Credit Corporation provided to the builder, we in turn were asked to underwrite the amount of such loans in order to protect the corporation against losses which it might incur if the builder-dealer failed to have the success in his enterprise that we commercially thought he might obtain." (816a)

Following the original arrangements effected among the parties in October, 1960 and during the balance of that year, Credit Corporation advanced $198,909 to plaintiff, and plaintiff purchased from Homes Division four model homes at a cost of $14,723 (163a, 184a). As plaintiff advised the Court of Appeals, these "four model homes were completed in February and March, 1961 and seven sales were made in March, 1961, twelve in April, seven in May, two in June and four in July, 1961, or a total of thirty-three. Thirty-three homes had construction completed including the four models through October, 1961 but twenty-one of those were completed in August, September and October (135a-137a). There were six sales in each of the months of August and September, 1961. The above indicates that sales had been going at a relatively good pace early and that construction was very slow during the first seven months of 1961" (CAB, pp. 14-15).

Mr. Fortner reported to the Homes Division "that due to serious delays in getting his United States Steel Homes program started, and further delays in starting the sold houses because of extremely wet weather all spring, and due to the fact that they had gone over their budget for advertising, furnishings, promotional materials, etc., by a considerable amount, he is in somewhat of a bind for capital." Nonetheless Mr. Fortner, on May 19, 1961, requested further financing to acquire an additional 32 lots for the construction of Homes Division houses (399a-401a). Plaintiff's outstanding indebtedness to the Credit Corporation at the time was $310,609 (645a).

Mr. Fortner requested a land loan of $54,000 (of which $24,000 was to be used to retire an existing mortgage and

$30,000 as working capital) and a construction loan of $406,400, or a total of $462,400. On June 20, 1961, at a meeting with Mr. Fortner, the Credit Corporation sought a more conservative basis of financing but "Mr. Fortner's position was that he needed the financing as requested and felt that a loan similar to that which [was] originally made was justified." At the time of this meeting, Mr. Fortner was in the process of erecting four Homes Division houses on these additional lots aided by local financing[19] (407a-411a).

Thereafter, the Homes Division recommended such financing because the additional project would be of important commercial benefit to it in Louisville, and the plaintiff was earning a profit on the sale of the houses and had in excess of 35 sales ahead which would permit liquidation of indebtedness maturing in 1961 (417a-418a). On August, 2, 1961, the additional financing was consummated for the 32 lots with a Land Note in the amount of 59,000 and a Construction Note in the amount of $403,400 (243a-268a). Only the $59,000 land loan was added to the Homes Division's guaranty agreement with the Credit Corporation (443a).

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19. The Credit Corporation representative who met with Mr. Fortner reported: "As previously indicated herein Mr. Fortner stated that he needs the amount requested over and above that required to retire the existing mortgage to replenish working capital which had been depleted to date due to various delays. In this connection, in our discussion I informed Mr. Fortner that expenditures of this nature are normally borne by all builders and in many instances represent about the only risk capital a builder provides. * * * In my opinion the expenditures heretofore made for promotional activities, model furniture, overhead, etc., represent about the only capital injection made in connection with our existing loan and another 100% loan to enable a recapture of a part of such expenditures is not justified" (411a-412a).

Mr. Fortner says that it was not until after this second financing in August, 1961 that he became aware of the extent of the allegedly defective nature of the Homes Division houses (291a). As of the end of that month, the Homes Division had shipped 37 houses to plaintiff and it had completed construction of 18 of them (135a-137a, 455a).

By the end of December, 1961, plaintiff had purchased in that year 55 houses for $189,002, making a cumulative total of 59 houses, all of which had been shipped by the Homes Division. The Homes Division reported early in January, 1962 that plaintiff's "accounts are current and relations with the dealer are excellent" (184a, 449a-450a).

In January, 1962, plaintiff ordered four more houses from the Homes Division, closed four sales with buyers and had thirteen more sales awaiting closings (448-449a). Plaintiff ordered one house in February, two in March, one in April and three in May, all of which were shipped by the end of May, making a grand total of 70 houses sold and shipped to plaintiff by the Homes Division (4 in 1960, 55 in 1961 and 11 in 1962). By the end of May, plaintiff had closed sales to buyers on 50 of these houses (428a-429a, 446a-448a). Ultimately plaintiff sold at least 62 of the houses (117a-118a).

As early as April 26, 1962, however, the Homes Division had information that Mr. Fortner was dissatisfied. At a meeting on that date, he confirmed that he was considering discontinuing his program with the Homes Division. Following this meeting, the Homes Division's Dealer Sales Manager reported that Mr. Fortner "stated that * * * it had been one series of 'minor' problems from the start,

each of which, while only a few dollars in itself, continued to pile costs on top of costs to the point where his profit margin was almost nil. Along with this, he stated he had difficulties getting clearance on buyers. The combination of product problems, loss of confidence by his sales group and difficulties in getting buyer approval made it impossible for him to carry on the volume program he had originally anticipated. Volume is his big need to maintain the prices he has established. He stated that, while we have been prompt, in most cases, in shipping replacement materials or correcting mistakes, still and all this was not the answer." Although Mr. Fortner's program had called for house sales in the $11,000 to $13,000 price range (388a), the Homes Division representative reported:

> "The most important item in our conversation was the fact that he has become convinced that his salvation lies in a $10,000 house and he is going to have this whether it is with us or with someone else. He indicated a willingness to 'let bygones be bygones' if we could furnish such a product, even if it involved special pricing in the home package from us."

The report concluded that "we are in serious danger of losing him" and that, while much of Mr. Fortner's trouble had been caused by his own construction methods, if he would present specific figures on extra costs caused by Homes Division mistakes "we should attempt to make an equitable settlement." The Homes Division Manager also "promised [Mr. Fortner] to do whatever I can to correct the problems * * * outlined" (418a-422a).

On May 4, 1962, eight days after the April 26 meeting with Mr. Fortner, the same Homes Division representative called him to arrange visits by "each of the vendor repre-

sentatives whose products [in the Homes Division house packages] apparently were in question." He advised Mr. Fortner "that we intended to vigorously follow up on these complaints and intended to eliminate these problems if at all possible. I also reminded him that, as soon as he was able to gather the specific costs and information concerning his complaints, we would like to take a look at this" (427a-428a).

On May 31, 1962, however, according to an affidavit of Mr. Fortner, "prior to the filing of this action" he arranged a meeting with representatives of the defendants at his attorneys' offices "to work out an amicable solution to the problems that were caused by the defective condition of the homes being furnished." Mr. Fortner states that he explained that the alleged defects had caused the reputation of his subdivision to deteriorate and it was "practically impossible" to sell the Homes Division houses[20] and therefore plaintiff could not continue to construct them.[21] The defendants were told that their loan could be "completely repaid if they would delete from the loan agreement the requirement that it was necessary to erect on each lot a prefabricated dwelling house manufactured by the * * * Homes Division * * *" and would permit the

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20. The evidence is uncontradicted, however, that by the beginning of May, 1962, plaintiff had completed construction of 56 houses, including the 4 model houses, and by the end of that month plaintiff had closed sales on 50 of them, at least 12 more being sold thereafter (117a-118a, 135a-137a, 429a).

21. The record suggests that the Louisville housing market may have undergone a significant slump during the pertinent period of plaintiff's dealings with defendants. While the number of single family dwellings constructed in each year of the 1958-1965 period other than 1960 and 1961 was without exception in excess of 4,000, in those two years the number fell to 3,200 (277a).

Credit Corporation's financing to be used to construct conventional homes. Mr. Fortner states that defendants refused[22] (292a-294a).

The evidence is uncontradicted, however, that Mr. Fortner was told at this meeting that if he wanted to build other houses, plaintiff should pay off the money loaned by the Credit Corporation (880a). Thereafter, even though plaintiff's accounts with both the Credit Corporation and Homes Division were current (428a-429a), as plaintiff told the Court of Appeals, "Upon the Credit Corporation's refusal to delete from the loan agreements the requirement that Homes Division homes be purchased and built, this antitrust suit was filed and no further payments were made" (CAB, p. 18).

As of May 31, 1962, plaintiff had realized a net profit of $6,000 from its development project (indeed, independent certified public accountants were unable to identify an additional $9,000 of expenses charged against profits) (430a-437a). When plaintiff instituted its antitrust action, the Credit Corporation asserted its compulsory counterclaim to collect the amount owing to it and to foreclose the underlying mortgages. The District Court ordered a separate trial for this aspect of the litigation (174a). The principal amount of plaintiff's indebtedness to the Credit Corporation was adjudged to be $253,697 (192a). Court-appointed independent appraisers valued the mortgaged properties at $261,200 as individual lots, $238,100 as several small groups, and $195,000 as three larger groups

22. In its brief, plaintiff states that its request at this meeting was met with "an adamant refusal (293a) and threats of foreclosure on the mortgages," characterized as "coercion" (Br., p. 7). Plaintiff offers no supporting citation and, in fact, the record evidences no such threats.

(219a-228a). On a distress basis at the judicial sale, the properties actually produced $206,700 (229a-231a).

Apart from its characterization of the arrangements it negotiated with defendants, the plaintiff makes the following argument as to the financing of others:

> "That the financing under the terms and conditions offered * * * many others was unique and unavailable elsewhere can be found in the Homes Division Sales Manual (374a), which indicates that the ordinary financing program on land acquisition and development was a 60% loan (374a). * * * Significantly, the Sales Manual also points out that the major competitors of the Homes Division made development loans at simple interest plus a 10% fee, whereas the Credit Corporation charged simple interest plus a ½ point fee (377a). * * * These loans were unique not only to Petitioner but to the other customers to whom they were presented. All of the loans made were not bankable loans (857a), which means that normal channels of funds were not available to such borrowers. The terms of the loans were most important to many of the borrowers including Petitioner. The [defendants] according to their own admissions went far beyond any competition by making higher percentage loans in relation to equity at more advantageous rates to the borrower. * * * (377a)"[23] (Br., pp. 8-9, 23-24).

The record, however, does not specify the terms and conditions on which any dealer other than plaintiff was in fact financed by the Credit Corporation, whether in its

23. Elsewhere, without citation to the record, plaintiff states that "there is ample proof in the record that [defendants] conspired [to offer unusual and unique financing for land purchase and development which could not be obtained elsewhere to plaintiff] as well as to all others who borrowed money from Credit Corporation. * * *" (Br., p. 19)

regular or special financing categories. Indeed, as previously noted (pp. 7-9, *supra*), the uncontradicted evidence shows only that Credit Corporation's financing is individually negotiated in the light of each dealer's particular circumstances.

To the extent that the Sales Manual upon which plaintiff relies offers any comparison of Credit Corporation's financing, it does so solely in terms of the financing offered by "other major manufacturers" of prefabricated houses (377a). It offers no comparison with "bankable loans" available in normal channels or financing of whatever character offered by Mr. Horn's Louisville Mortgage Service Company or other similar lending institutions or mortgage companies, whether in Louisville or elsewhere. As to the comparison of Credit Corporation's financing with that of the Homes Division's competitors, the Sales Manual says only that "most of the other major manufacturers make development loans in some form or another, but most of them charge a fee of 10% or more in addition to simple interest. We only charge a ½ point fee" (377a).

Neither the Sales Manual nor any other evidence (including the affidavits of Mr. Fortner and Mr. Horn) suggests that competitors of the Homes Division have not offered land financing at more than 60% in relation to the borrower's equity, as the Credit Corporation has done occasionally in its special loan classification. In fact, the record is wholly silent as to what percentage of financing was available on "bankable loans" in normal channels. The record is equally silent on what percentage loans were available from lenders in other channels, subject to the single exception that Mr. Horn's company and others like

it solely in Louisville did not offer 100% financing until 1963 (294a-295a).

Similarly, while the Sales Manual states that most of the Homes Division's competitors have charged a 10% service fee, neither the manual nor any other evidence suggests that none of them has matched the Credit Corporation's ½ of 1% charge. Indeed, neither Mr. Horn's affidavit nor any other evidence ascribes "uniqueness" to the Credit Corporation's service fee or even indicates that any such charge is imposed on "bankable loans" in normal channels or on financing by companies like those of Mr. Horn, whether in Louisville or elsewhere. Moreover, since the service fee, whether 10% or ½ of 1%, is deducted at the closing (30a-31a), thereby reducing the loan proceeds taken by the borrower, it is in the final analysis merely another element of the percentage of the loan in relation to the borrower's equity.

Plaintiff also contends that the evidence "shows that the [Credit Corporation's] restrictive loan agreements involved 68% of [Homes Division's] sales or $3,971,217.76 in 1960, 70% of sales of $2,823,383.50 in 1961, and 75% of sales or $2,289,819.00 in 1962" (Br., p. 33). This argument is mounted on the following analysis of statistics in the record:

> "The Credit Corporation in 1960 made [loan commitments] totalling $22,625,805 (675a) to achieve sales of home packages worth $3,971,217.76 (183a, 676a, 677a). For 1961 [loan commitments] of $19,342,612.00 were made to achieve sales of $2,823,383.50. In 1962 loans of $19,283,544.00 were made to achieve sales of $2,289,819.00. All of these loans with insignificant

exceptions (676a) were made with the restrictive tying agreement in the applicable loan agreements (167a)'' (Br., p. 9).

Concededly, these figures accurately represent the volume of loan commitments undertaken by the Credit Corporation upon the condition that Homes Division houses were to be placed on the mortgaged properties as long as loans were not repaid. There is, however, no evidence that these loan commitments ''achieved'' or prompted the stated volume of house sales or, indeed, how many of these commitments carried through to fruition. All that the record shows as to the cited sales is that they were made to dealers who were receiving financial assistance of undefined amount and on undefined terms and conditions. Moreover, there is no evidence which of these loan commitments or what proportions of the totals were within the special financing category or were on ''unique'' terms and conditions when and where made even by the standards plaintiff argues here. A more meaningful insight into the extent to which the Credit Corporation's financing activities constituted ''the exercise of naked economic power,'' as plaintiff charges (Br., p. 23), lies in this unchallenged fact: during the three years pertinent to plaintiff's case—1960 through 1962—loan commitments (whether or not actually taken by the borrowers) aggregating as much as $250,000 were made to a total of only 43 Homes Division customers (including plaintiff) who were located in nine different states (178a-180a).

Summary of Argument

For the first time, plaintiff urges here that, contrary to the District Court's conclusion, plaintiff's case does not depend solely on the legality or illegality of the challenged tying arrangements. Before both courts below, however, all of plaintiff's claims were grounded on the contention that conditioning by the defendants of their financing upon the purchase of their prefabricated houses was an unlawful tying arrangement, constituting a *per se* violation of the Sherman Act. Whether standing alone or as the objective and effectuation of a conspiracy to restrain trade and to monopolize, the argued *per se* character of the tying arrangement was the crux of plaintiff's case and a prerequisite to all the claims asserted.

Plaintiff concedes that when defendants moved for summary judgment shortly before the trial discovery was complete, there had been four years of preparation, and the evidence was extensive and included all the material pertinent to plaintiff's case. Moreover, plaintiff argues that the evidence entitled plaintiff to a directed verdict on the liability issues. Plaintiff neither shows any material issue of fact to be in dispute nor questions the credibility of any witness or the probative force of any other evidence. In these circumstances and where *per se* violations of the antitrust laws requiring no proof of motive or intent are alleged, as here, summary judgment is appropriate.

Plaintiff argues that either because financing was not available at all from other sources or was offered only

on less favorable terms, defendants' financing was "unique" and therefore, on the authority of the *Loew's* decision,[24] supports the inference of "sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product." *Loew's,* however, reiterated prior holdings (based upon accommodation of the antitrust laws to the objectives of the patent and copyright laws) to the effect that "the requisite economic power is presumed when the [tying] product is patented or copyrighted." The opinion in *Loew's* does not define "uniqueness" in other circumstances, and it recognizes that in some cases even full-scale inquiry into the relevant market for the tying product and the seller's share of that market may be necessary although proof of monopoly power is not essential.

The tying case decisions of this Court demonstrate that, outside the patent and copyright areas, evidence of meaningful economic power over the tying product is a prerequisite to the application of the virtual *per se* rationale inasmuch as tie-ins are not inevitably anticompetitive. More specifically, the Court's decisions support the conclusion that where the tying element is offered on more favorable terms than elsewhere it can not be inferred without more that "sufficient economic power" over the tying product exists. See *FTC* v. *Sinclair Refining Co.,* 261 U.S. 463 (1923), where the factual context closely parallels that here, and *Northern Pacific Railway Co.* v. *United States,* 356 U.S. 1, 8 (1958), where weight was given to the fact that no claim was made that the tying element

24. *United States* v. *Loew's Inc.,* 371 U.S. 38 (1962).

"came any cheaper than if the restrictive clauses had been omitted."

Logic dictates that "uniqueness," in the sense of *Loew's,* should not be ascribed to a tying product simply because it is offered on more favorable terms. A buyer who agrees to take a tied product with a tying product offered on more favorable terms may do so because he considers the "package" the best business arrangement for him, not because the seller has economic power over the tying product. Indeed, the fact that the tying product is offered on more favorable terms may suggest that it lacks even competitive parity in its own market. Further, a tying product offered on more favorable terms may be nothing more than a "loss leader" promotional device.

Plaintiff's novel contentions that a seller's financing of his dealers constitutes a *per se* violation simply because it is offered on more favorable terms than available elsewhere would inhibit competition in the "tied product" (the seller's goods) and would adversely affect the viability of many small businesses buying from such sellers. Such financing, to the extent that it is on more favorable terms, amounts to a reduction in the price of the tied product and represents competition in the market for that product. As such a price reduction, the financing challenged is an integral element of the tied product, analytically precluding the existence of the two different products requisite to the *per se* category of tying violations.

Finally, drawing every reasonable inference in favor of plaintiff, the record fails to show that defendants' financing was "unique" or that a not insubstantial amount of commerce was affected.

ARGUMENT

I

Plaintiff's contention that its case does not turn upon finding a *per se* tying violation is an afterthought and the case was ripe for summary judgment.

A. Plaintiff's argument that defendants conspired to restrain trade and monopolize independent of the alleged *per se* tying violation is a new theory of its case not urged below.

Contrary to well-established principles, plaintiff argues before this Court a wholly new theory of its case never presented either to the District Court or the Court of Appeals.

Plaintiff urges that because the District Court concluded "that the case depended solely on the legality or illegality of the tying agreement"[25] the Court of Appeals should have "reversed out of hand on this point alone" (Br., p. 21). In thus contending that a finding of an unlawful tying agreement was not necessary to one aspect of its case, plaintiff declares that its complaint "specifically allege[s] a conspiracy and concert of action to use the financing power of the * * * Credit Corporation as a means of forcing dealers such as and including [plaintiff]

25. The District Court held: "It is these loan agreements which plaintiff claims are illegal tie-in contracts, violative of Sections 1 and 2 of the Sherman Act. The fact of conspiracy or lack of it, surrounding or related to the execution of these contracts, has no bearing on the matter at this point. If the contracts are illegal under the facts attendant thereto, then plaintiff has a cause of action and may then proceed to prove conspiracy." (Br., pp. 45-46)

to purchase the prefabricated houses of" the Homes Division.[26] (Br., p. 15).

Whether or not the complaint (18a-24a) alleges any antitrust violation wholly separate and apart from unlawful tying arrangements imposed by the defendants upon plaintiff and others, concededly modern rules require that pleadings be so construed as to do substantial justice. The courts below, however, were bound to decide the case upon plaintiff's own characterization of it.

Before the District Court, in support of its contentions that it was entitled to a directed verdict, plaintiff's sole tendered instruction on the issue of liability was that "the evidence presented in this case has established as a matter of law that the defendants * * * conspired to establish an unlawful tying agreement between the defendant Credit Corporation and the plaintiff* * *" (280a). In opposing defendants' summary judgment motion, plaintiff repeatedly described its case only as "a tie-in case."[27]

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26. Conspiracies and attempts to monopolize (*i.e.*, to acquire monopoly power—the power to control price and exclude competition) require proof of specific intent and the dangerous probability of achieving monopoly in the relevant market. *Times-Picayune Publishing Co.* v. *United States*, 345 U. S. 594, 626 (1953); *United States* v. *Griffith*, 334 U. S. 100, 105 (1948); *United States* v. *Jerrold Electronics Corp.*, 187 F.Supp. 545, 567 (E.D. Pa. 1960), *aff'd. per curiam*, 365 U. S. 567 (1961); *Walker Process Equipment, Inc.* v. *Food Machinery & Chemical Corp.*, 382 U. S. 172 (1965); *Swift & Co.* v. *United States*, 196 U. S. 375, 396 (1905). Neither the complaint nor plaintiff's characterizations of the record satisfy all of these requisites notwithstanding its urging that defendants have violated Section 2 of the Sherman Act.

27. Plaintiff's Memorandum In Response To Defendants' Motion For Summary Judgment: "The [*Tampa Electric*] case, * * * cited by defendants is not a tie-in case as charged by the plaintiff in the present action. * * *" (p. 2) "Defendants cite numerous cases which

Before the Court of Appeals, plaintiff argued only that summary judgment for the defendants was improper "on the antitrust issues when the facts clearly establish an illegal conspiracy by the defendants which forced, through economic power and circumstances, an unlawful tying arrangement on plaintiff which the defendants then combined and conspired to enforce * * *" (CAB, p. 50). Plaintiff specified that its "claim is that the defendants combined and conspired to establish an illegal tie-in arrangement whereby the Credit Corporation would require as a condition to the giving of its financing that the company using the financing would have to purchase pre-fabricated home packages from the Homes Division" [28] (CAB, p. 51).

In sum, by plaintiff's own characterizations of its case before both courts below, unlawful tying arrangements, whether standing alone or as the objective and effectuation of a conspiracy to restrain trade and monopolize, were the crux of its claims and an essential pre-condition to establishing those claims. Indeed, notwithstanding its contention that the District Court committed reversible error in concluding that the case turns upon whether or

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they claim stand for the proposition that the agreements attacked in this case are not illegal tying agreements. However, they have failed to adequately analyze these decisions and many of the decisions are authorities relied upon by the plaintiff." (p. 2) "We thus have loan agreements which impose illegal tying arrangements on their face. We have two separate corporations * * * conspiring to create this and other illegal tying arrangements. * * * We have thus completely met the test established by the authorities to show a *per se* illegal tying arrangement." (p. 7) "The plaintiff can find no decided case where an illegal tying arrangement or conspiracy to require or establish an illegal tying arrangement has been decided on the question of *pari delicto*." (pp. 9-10)

28. The Appendix to this brief contains the entire antitrust argument from plaintiff's brief before the Court of Appeals.

not unlawful tying arrangements can be found, even here the plaintiff's own description of its cause supports the conclusion reached below.[29]

Other than in exceptional cases, this Court has consistently declared its refusal to hear questions or contentions never raised below and which are urged for the first time as an afterthought on review here. *Virtue* v. *Creamery Package Mfg. Co.*, 227 U.S. 8 (1913); *Duignan* v. *United States*, 274 U.S. 195 (1927); *Blair* v. *Oesterlein Machine Co.*, 275 U.S. 220 (1927).

B. Based upon all the circumstances and plaintiff's own view of its case, there was no error in granting summary judgment.

Plaintiff states that when it instituted this action, "Much discovery was had thereafter, principally by Petitioner, including interrogatories, numerous depositions and the production of numerous documents by [defendants]. All of the pertinent material to Petitioner's cause appears in the two volume appendix in the record before this Court and is quite extensive * * *. Summary judgment [was] first sought eleven days before trial,[30] and after four years of preparation" (Br., pp. 10, 14).

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29. "The underlying element of both charges [alleged violations of Sections 1 and 2 of the Sherman Act] involves loan agreements * * * which required [plaintiff] to build in its subdivision prefabricated houses manufactured and sold by the Homes Division of U. S. Steel as a condition to the loan of money for land acquisition and development. * * * The evidence establishes a conspiracy between U. S. Steel and U. S. Steel Homes Credit Corporation to establish this and many other illegal tie-in agreements through the use of such loans, for the purpose of increasing U. S. Steel's share of the prefabricated house package market. * * * Summary judgment procedures in antitrust cases involving charges of *per se* violations and conspiracy are and should be frowned upon and not allowed." (Br., pp. 12-13)

30. Plaintiff was ready for trial on the scheduled date (341a).

Comparison of plaintiff's brief and the record demonstrates that no material issue of fact is disputed, and plaintiff raises no question of witness credibility. Nor do defendants contest any reasonable inferences that can be drawn from the evidence, including those most favorable to plaintiff where alternative inferences are possible. Finally, as plaintiff argued before both the District Court (280a) and the Court of Appeals (CAB, pp. 88-89), it urges here "that if the evidence at the trial on the issues of liability [is] the same as is now in the record, then Petitioner would be entitled to a directed verdict on such issues, with only the question of damages to be resolved by a jury" (Br., p. 37).

The theory underlying summary judgment is substantially the same as that governing a directed verdict. 6 Moore, Federal Practice, ¶56.02[10], p. 2043; *cf. Sartor* v. *Arkansas Natural Gas Corp.*, 321 U.S. 620, 624 (1944). The essence of both is that there is no genuine issue of material fact to be resolved.

Plaintiff relies on *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U.S. 464 (1962). In *White Motor Co.* v. *United States*, 372 U.S. 253, 259 (1963), the Court pointed out that *Poller* held summary judgment inappropriate where "motive and intent play leading roles" but that in other circumstances "summary judgments have a place in the antitrust field, as elsewhere * * *." That same conclusion has been more recently reiterated in *First National Bank* v. *Cities Service Co.*, 391 U.S. 253 (1968), a case demonstrating that summary judgment may be appropriate even where a conspiracy among competitors

is alleged. Moreover, that case stands for the proposition that under the present Rule 56(e) of the Federal Rules of Civil Procedure summary judgment cannot be successfully opposed on speculation rather than the drawing of logical inferences from a showing of admissible facts to which the witnesses could competently testify.

Alleged *per se* violations of the antitrust laws, where no proof of motive or intent is required, are particularly appropriate subjects for summary judgment. In cases of alleged tying arrangements, summary judgment has been granted in favor of both plaintiffs and defendants. *Northern Pacific Railway Co.* v. *United States,* 356 U.S. 1 (1958); *International Salt Co.* v. *United States,* 332 U.S. 392 (1947); *Dehydrating Process Co.* v. *A. O. Smith Corp.,* 292 F.2d 653 (1st Cir.), *cert. denied,* 368 U.S. 931 (1961).

In these circumstances, it is submitted there was no error below in concluding that this case was appropriate for the grant of summary judgment.

II

Defendants' financing conditioned upon the purchase of their prefabricated houses was not a *per se* tying violation.

A. Plaintiff's contentions that a non-patented, non-copyrighted tying element, "unique" solely because offered on more favorable terms than available elsewhere, therefore evidences the requisite economic power to establish a *per se* violation find no support in this Court's decisions or in any logical analysis.

Plaintiff's unlawful tying arrangement contentions are appealingly simple:

(1) Defendants have admitted that the loan agreements at issue tied the purchase of house packages to the lending of money for land purchase and development (Br., pp. 16, 25).

(2) These loans, because of their "unusually favorable terms" (*i.e.*, "higher percentage loans in relation to equity at more advantageous rates") and their unavailability through "normal channels," were "unique not only to [plaintiff] but to * * * other customers" (Br., pp. 23-24, 30).

(3) *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 6 (1958) holds that tying agreements "are unreasonable in and of themselves whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a 'not insubstantial' amount of interstate commerce is affected" (Br., p. 26).

(4) *United States* v. *Loew's Inc.*, 371 U.S. 38, 45 (1962) states that "Even absent a showing of market dominance [some power to control price and to exclude competition], the crucial economic power [over the tying product] may be inferred from the tying product's desirability to consumers or from uniqueness in its attributes" (Br., p. 28).

(5) Therefore the tying arrangements here were "*per se* violations" (Br., p. 13).

With respect to the element of "sufficient economic power" over the tying product necessary to establish tying arrangements as a virtual *per se* violation, patently plaintiff's case turns on the contention that defendants' financing was "unique" within the meaning of the *Loew's* decision. Rational antitrust enforcement in the public interest requires avoiding the tyranny of labels, and *Loew's* neither fully defined the meaning of "unique" nor changed the pre-existing law on tie-ins. Rather, the Court, in the context of block-booking of copyrighted films, reiterated the holdings of prior cases[31] to the effect that "the requisite economic power is presumed when the [tying] product is patented or copyrighted" and explained the rationale (arising from the nature of the statutory grant of "monopoly") for this presumption.[32]

31. *International Salt Co.* v. *United States*, 332 U. S. 392 (1947) and *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131 (1948).

32. 371 U. S. at 45-46. The presumption represents an intertwining of the antitrust law with the patent and copyright laws—an accommodation of the former to the latter's "hostility to use of the statutorily granted patent monopoly to extend the patentee's economic control to unpatented products." The result is that where the tie is effected by a patent or copyright, any showing of even minimal ac-

Outside the area of patents and copyrights, the *Loew's* decision offers little insight as to what kind or degree of "uniqueness" will prove "sufficient economic power" over the tying product. Indeed, the Court's opinion makes it clear that, while market power in the sense of Section 2 of the Sherman Act (*i.e.*, monopoly—the power to control price or exclude competition) is not a prerequisite, "uniqueness" has not become the sole calculus since at least in some cases it will be necessary to inquire into the relevant market for the tying product and the seller's share of that market.[33] And since the decision in *Loew's*, this Court, stating that "tying arrangements * * * may fall in [the *per se*] category, though not necessarily so," has pointed to "the importance of the tying arrangement in its factual setting." *White Motor Co.* v. *United States*, 372 U.S. 253, 262-263 (1963).

Significantly, putting aside the tie-in cases involving patents or copyrights, there are only two opinions of this

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tual commercial leverage or economic power in the marketplace will be dispensed with, and if a "not insubstantial" amount of commerce is affected, the arrangement will be found unlawful. The antitrust laws will thus guard against any extension of the statutory limited "monpoly" privilege as jealously as do the patent and copyright laws (*e.g.*, the patent laws deny a patentee who uses his patent as a tie all relief against infringement).

33. "* * * [I]t should *seldom* be necessary in a tie-in case to embark upon a *full-scale* factual inquiry into the scope of the relevant market for the tying product and into the corollary problem of the seller's share in that market." 371 U. S. at 45 (Emphasis added.) Moreover, the statement in the *Loew's* opinion that "the crucial economic power may be inferred from the tying product's desirability to consumers" suggests that the Court meant that some degree of market sucess in the tying product must be shown. A customer will seldom if ever buy a product he deems undesirable, so that if something less than a degree of market success were intended any purchase of the tying product, even by a single buyer in a minimal amount, would prove "sufficient economic power."

Court delineating what constitutes "sufficient economic power" over the tying product to come within the Sherman Act prohibition. In *Times-Picayune Publishing Co.* v. *United States,* 345 U.S. 594 (1953), it was held that the defendant, with 40 percent of a three-newspaper advertising market, lacked a sufficient increment over the other two papers to occupy a "dominant" position.[34] In *Northern Pacific Railway Co.* v. *United States,* 356 U.S. 1 (1958), the tying product which was found to manifest "sufficient economic power" consisted of defendant's "extensive landholdings which it used as leverage to induce large numbers of purchasers and lessees to give it preference, to the exclusion of its competitors, in carrying goods or produce from the land * * *, [which] was strategically located * * * and was frequently essential to their business activities." Moreover, "this host of tying arrangements [was] itself compelling evidence of the defendant's great power * * * where * * * no other explanation [was] offered for the existence of these restraints" and the defendant's purpose "obviously was to fence out competitors, to stifle competition." [35]

Against this background and the following discussion, it is submitted that the tying arrangements challenged here

34. 345 U. S. at 611-612.

35. 356 U. S. at 7-8. In the only other case outside the patent and copyright areas to come before the Court, there was a *per curiam* affirmance of a finding that the innovator of the first successful community television antenna system, who sold approximately 75 percent of such systems in the country, had "sufficient economic power" to make its tying of the full system and of service contracts unlawful not at the inception of its business but only when those restraints were no longer necessary for its survival. *United States* v. *Jerrold Electronics Corp.,* 187 F. Supp. 545 (E.D. Pa. 1960), *aff'd. per curiam,* 365 U. S. 567 (1961).

fail to come within any of the standards articulated by this Court as establishing violation of the Sherman Act and do not fit either the policy or rationale of the virtual *per se* rule applicable in appropriate tie-in cases.

While tying agreements, unlike exclusive dealing restrictions, have been deemed by this Court to "serve *hardly* any purpose beyond the suppression of competition,"[36] even under the narrower, more easily established standards of Section 3 of the Clayton Act, tie-ins have been recognized as not inevitably anticompetitive. Thus, in *FTC* v. *Sinclair Refining Co.*, 261 U. S. 463 (1923), the Court approved the leasing of unpatented gasoline pumps on condition that only the lessor's gasoline be dispensed through them.

The defendant gasoline company in *Sinclair* had no market dominance in the tying products, which were readily available from other sources, but the defendant leased its pumps at nominal rates not representing reasonable returns upon investment and on terms more favorable than if the dealers had to buy them. The tied product was but one of many brands of gasoline, and no one of them was essential to the dealers' business. While the dealers were free to sell competing gasoline simultaneously from other pumps and to discontinue use of the defendant's pumps, the argued practical effect of the tie-in was to confine most dealers to handling only the defendant's gasoline. The Court noted, however, that the practice "appears to have promoted the public convenience by inducing many small

36. *Standard Oil Co. of California* v. *United States*, 337 U. S. 293, 305-306 (1949). (Emphasis added.)

dealers to enter the business and put gasoline on sale at the crossroads.''[37]

Clearly the facts of the *Sinclair* case illustrate that there are situations where a tying arrangement results not from market control or leverage over one product, even though it is made available on uniquely favorable terms, but rather because the arrangement serves a useful economic purpose and will not necessarily have an adverse effect upon competition in the market for the tied product. Equally important, *Sinclair*, even though involving unpatented machinery rather than financing as the tying element, is highly analogous to the arrangements at bar and demonstrates that a *per se* approach is no more appropriate on the facts here.

In *Sinclair*, the tying pumps were readily available on the market, but were offered by defendant on unique terms more favorable to the dealers than those available from other sources. Here plaintiff admits that financing was generally available through ''normal channels'' and others but claims at most only that defendants' financing was offered on more favorable terms than it could obtain elsewhere.

In *Sinclair*, the pump leases left the dealers free to handle competing gasoline and to take pumps from other sources, whether or not conditioned upon gasoline purchases. The only limitation was that the dealers must use the defendant's gasoline if they used its pumps, and the dealers were free to terminate even that limitation by discontinuing use of the pumps. Here the financing left the

37. 261 U. S. at 475.

plaintiff free to deal in competitive houses and to take financing from other sources, whether or not conditioned upon house purchases. The only limitation was that plaintiff must buy defendants' houses for specified lots if it used their financing, but plaintiff was free wholly to avoid or to terminate even that limitation by not using defendants' financing or by repaying any advances taken.

In *Sinclair*, the dealers agreed to the tying arrangement not because they had to obtain the tying product from the defendant as a matter of economic necessity (other pumps were readily available even though on less favorable terms) but because the arrangement was the most advantageous method of securing both the pumps and the gasoline. Competition in the retail gasoline trade was enhanced because pump leases facilitated new dealer entries into the business. The circumstances, therefore, were unlike those in *Northern Pacific*, where defendant's extensive holdings of strategically located land were "frequently essential to [the purchasers' and lessees'] business activities."[38] Similarly, the tied gasoline in *Sinclair* was but one of comparable competing brands, no one of which was essential to the dealers' business, so that the situation was not one where economic coercion by means of the tying product could be inferred from the mere existence of the

38. 356 U. S. at 7. Similarly, *Associated Press* v. *Taft-Ingalls Corp.*, 340 F.2d 753 (6th Cir.), *cert. denied*, 382 U. S. 820 (1965), upon which plaintiff relies, is distinguishable. There the Court of Appeals "first emphasize[d the defendant's] position of dominance in the field of news," found that its news dispatches were "comparable to a copyright * * * [and] possess a uniqueness 'to suggest comparison with a monopoly by patent,' " and then concluded that one wire service included in a mandatory package was "indispensable" to the plaintiff. 340 F.2d at 766-768.

tying arrangement absent a showing of economic power in the tying product.[39]

Here plaintiff contends that its evidence shows that the defendants have used their "economic power in the form of loans not available elsewhere at all or under the terms offered to force the purchase" of defendants' homes and that the terms of the loans were so "economically attractive" that plaintiff "was compelled to accept the tying arrangement to obtain the loans" (Br., pp. 12, 21). If plaintiff's first conclusion (that loans were not available to it at all) is accepted, then there was no restraint of commerce since defendants' financing could not have foreclosed any competitor of Homes Division from supplying the plaintiff. If plaintiff's alternative conclusion (that loans on equally favorable terms were unavailable to it) is accepted, then plaintiff has not been coerced by economic necessity to preserve an existing business but rather its entry into the housing development business has been facilitated by the most advantageous means for obtaining both the financing it needed and houses to which it had no objection at the time the arrangements were negotiated.[40]

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39. "* * * [T]here may be instances where economic coercion by a vendor may be inferred, without any direct showing of market dominance, from the mere existence of the tying arrangements themselves, as where the vendee is apt to suffer economic detriment from the tying clause because precluded from purchasing a tied product at better terms or of a better quality elsewhere." *Northern Pacific*, 356 U. S. at 16-17 (Dissenting opinion).

40. Reference to this fact does not represent any *pari delicto* argument by the defendants. The fact is germane to a proper analysis of whether the Credit Corporation's financing of the plaintiff evidenced "sufficient economic power" to constitute the kind of tying element requisite to a *per se* violation. While defendants attempted to interpose the affirmative defense of *pari delicto* below, it was rejected and not even considered by the District Court (320a, 927a). Consequently, even if plaintiff's view of what this Court decided in *Perma Life Mufflers, Inc.* v. *International Parts Corp.*, 392 U. S. 134 (1968), were correct, that decision has no applicability here.

Even apart from the fact that defendants' financing enabled plaintiff to start a new business, many considerations militate against adopting a *per se* approach simply on the ground that the tying product is unique because offered on more favorable terms than available elsewhere. Whether a buyer pays a higher price for a tying product by itself or agrees also to purchase a tied product as the condition to paying a lower price for the tying product may not depend upon the seller's having economic power over the tying product at all. The arrangement may simply represent what the buyer considers the best business terms for him.

Indeed, where a tying product is unique because it is offered at a lower price or on more favorable terms than other such products, it is anomalous to urge that, without more, that fact supports an inference of "sufficient economic power" over the tying product (a conclusion which may well have shaped the Court's reasoning and the result reached in *Sinclair*). The fact that the tying product must be offered on more favorable terms may suggest that it lacks even competitive parity in its own market. If it has competitive parity, even if the tied product is worthless, then the tying product should command at least the prevailing price in its market unless taking the tied product places some significant burden upon the buyer.

This Court in *Northern Pacific* appears to have recognized that offering the tying product on more favorable terms may in fact imply the absence of "sufficient economic power." Thus the Court pointed to the fact that "the defendant makes no claim that [the tying land] came any

cheaper than if the restrictive clauses had been omitted."[41] Similarly, in *United States* v. *General Motors Corp.*, 121 F. 2d 376 (7th Cir.), *cert. denied*, 314 U. S. 618 (1941), the Court of Appeals, in finding that the defendants had employed the dominance of their GM car sales and franchises to coerce dealers into using defendants' financing, carefully rejected the contention that the financing had been intended to promote the sale of defendants' cars (*e.g.*, to avoid exorbitant charges by other financing sources). The court held that the jury could reject the argument as far-fetched since the defendants' financing was not *sui generis* or better than competitors'.[42]

Moreover, a tying product unique because of the more favorable terms on which it is offered may be nothing more than a "loss leader" promotional device. For example, the price of the tied product is for all effects and purposes "reduced" when the tying product is sold at an unremunerative level. By selling the tying product in such circumstances upon the condition that the tied product will be used with it, the seller hopes to obtain new customers and increased sales to make up for his losses on the tying product. In essence, he may at best obtain a requirements contract which, if the buyer is free to return the tying product, as the plaintiff was here, is subject to termination at any time.

Defendants recognize that the tying case decisions of this Court to date may not have exhausted the catalog of indicia of "sufficient economic power in the tying product to appreciably restrain commerce in the tied product."

41. 356 U. S. at 8.

42. 121 F.2d at 384, 412.

Those decisions do indicate, however, that outside the patent and copyright areas some evidence of meaningful economic power is essential, whether it be evidence of a degree of market dominance or success, necessity of the tying product to buyers, a burden to buyers in accepting the tied product sufficient to imply power in the tying product, or other proof.

B. Financing by a seller in connection with the sale of his goods is price competition in those goods and not a *per se* tying violation.

While the factors discussed above demonstrate with respect to *any* tying product why a *per se* disposition is improper just because that product is unique only in consequence of being offered on more favorable terms than otherwise available, the special nature of the tying product here—financing by a seller solely in connection with the sale of his own goods—also requires consideration.

Although plaintiff urges that it is not "attacking the use of financing or credit as it is normally used in the economy" (Br., p. 16), the implications of sustaining plaintiff's claims are no less far-reaching.

Sellers who finance either the purchase of their goods or, more broadly, the buyer's business in dealing in those goods inevitably, as here, condition the financing upon the purchase of their goods. Even the Government, in "selling" public programs like school integration, insists that those programs be implemented if its financing is accepted. In the private sector of the economy, such financing conditioned upon the purchase of the lending seller's

goods is widespread today, and it has promoted competition and the advent of small, independent businesses, not just in connection with the burgeoning franchise phenomenon but elsewhere as well. In essence, plaintiff's claim is that if such financing is more favorable than the buyer could obtain elsewhere, then it is "unique" and, unless the volume of goods affected is *de minimis,* constitutes a *per se* violation. This claim will not withstand analysis, either in law or logic.

Prior cases involving challenges to dealer financing by suppliers to achieve sale of their products appear to be few. In *Hastings Mfg. Co. v. FTC,* 153 F.2d 253 (6th Cir. 1946), loans to dealers as part of an inducement not merely to handle the seller's line of goods but to discontinue handling competitive products were found to be an unfair method of competition under Section 5 of the Federal Trade Commission Act only where part of an aggressive anti-competitive program which resulted in the respondent's growth from sixth to second largest seller in its industry. The Court of Appeals, however, noted, "It is not illegal for a manufacturer to finance his retail outlets. * * *"[43] In the so-called "Ice Cream Cases," the Commission upheld dismissal of complaints based in part upon dealer financing, conditioned upon exclusive dealing, for failure to prove the requisite competitive effect.[44] Thus, in these cases applying a statute with far less stringent standards for establishing violation than those of the Sherman Act and involving exclusive dealing by numbers of dealers, with total foreclosure of competitors from access to their business, there

43. 153 F.2d at 257.

44. *Carnation Company, et al.,* 60 F.T.C. 1274 (1962).

was no suggestion that conditioning dealer financing upon the non-exclusive purchase of the supplier's products was unlawful.

Turning to financing absent any exclusive dealing requirement, it is manifest that every sale on credit involves a tie-in. The seller in effect offers to finance the buyer if he will agree to purchase the seller's goods. The financing may be of greater or lesser degree—2 percent off for payment in ten days, six-month installment terms with or without interest and carrying charges, and so on. If the seller does not furnish credit, the buyer may obtain financing from a third party.

Every sale on credit is in effect a reduction of the price of the goods to the extent to which the cost to the seller of forgoing receipt of cash and use of the funds at the time of the sale is not added to the sale price. Where the seller offers credit or financing on more favorable terms than available elsewhere, he is in effect further reducing the price of his goods. If the seller's financing is more favorable, the buyer can purchase more of the seller's goods at the same cost to the buyer or the same volume at a lower unit cost. The extent of the additional reduction in price accepted by the seller is equivalent to what he forgoes by offering more favorable terms. Thus credit and financing are in fact price competition in the goods sold. Sellers fashion their credit and financing to assure that they are competitive in the sale of their goods. Indeed, the record here demonstrates that defendants did just that.

That the seller's financing may extend to aspects of the buyer's business other than just the purchase of the seller's

goods involves no different principle. Such financing is like a variety of other services offered in the competitive sale of the goods. For example, sellers furnish to their buyers technical advice, sales assistance and cooperative advertising and promotional services which promote not only the seller's goods but the overall business of the buyers as well. All of these services, in purpose and effect, amount, wholly or in part, to reductions in the price of the seller's goods. The fact, therefore, that the financing here enabled plaintiff not only to buy the defendants' houses but also to buy and develop the lots on which the houses would be placed and to construct them reflects no less a reduction in the price of the houses.

At least to the extent that defendants' financing was on more favorable terms than available elsewhere, it was an integral element of the price of the houses themselves. It is axiomatic that the *per se* category of tying violations requires two different products. *Times-Picayune Publishing Co.* v. *United States*, 345 U. S. 594 (1953). For example, delivered automobiles are one product, not automobiles and transportation. *Cf. Crawford Transport Co.* v. *Chrysler Corp.*, 235 F.Supp. 751 (E.D. Ky. 1962), *aff'd*, 338 F.2d 934 (6th Cir. 1964), *cert. denied*, 380 U. S. 954 (1965).

That the financing and houses sold to plaintiff are not "different products" for purposes of finding any *per se* tying violation is re-enforced by the fact that they are complementary and in fixed proportions to each other. Unlike *International Salt* and *Northern Pacific*, plaintiff's use of the financing did not require it to take defendants' houses on an open-ended requirements basis over the course of

time. The financing was geared directly to the purchase and development of a specified number of lots, for each of which plaintiff was to buy one of defendants' houses so long as it kept defendants' funds.

C. There is no evidence from which it can be inferred that the challenged financing was "unique" or that a not insubstantial amount of commerce in the tied product was affected.

Even apart from the fact that financing by a seller on more favorable terms than available elsewhere can not be fitted into the rationale of the virtual *per se* tying violation, defendants contend that plaintiff has failed to show any competent evidence from which it might be inferred that the challenged financing by Credit Corporation was "unique" (thereby establishing "sufficient economic power" in the tying element) or that a "not insubstantial amount of commerce in the tied product" was affected.

Without belaboring the evidence of record earlier described in the statement of the case, defendants point to Mr. Fortner's affidavit claiming that "to his knowledge" no other 100% land financing was available to plaintiff. That evidence is incompetent since no basis is stated for his knowledge and because his characterization of "uniqueness" is purely a legal conclusion without any comparative definition of how the terms and conditions of financing available elsewhere differed. Moreover, Mr. Fortner's affidavit leaves open serious questions as to whether financing on any other terms was available to plaintiff at all (see pp. 14-15, 27-28, *supra*).

Similarly, Mr. Horn's affidavit fails to define in any way the extent to which the 100% land financing negotiated by plaintiff differed from loans available elsewhere. And while Mr. Horn's background arguably qualifies him to offer an expert opinion, the sole thrust of his statement is that prior to 1963 his mortgage company and other such organizations and lending institutions in Louisville did not offer 100% land financing. Even any expertise possessed by Mr. Horn, however, does not make his legal conclusion of "uniqueness" competent (see pp. 16-18, 27-28, *supra*).

For the reasons analyzed at pp. 26-29, *supra*, there is a failure to show that financing extended to other Homes Division dealers was "unique" or that house sales tied to any such financing of other dealers amounted to a "not insubstantial amount of commerce."

Finally, even if, *arguendo*, the financing of plaintiff was "unique," the amount of commerce involved is *de minimis*. In 1961, the year of its greatest purchases, plaintiff bought only 55 houses from the Homes Division at a price of $189,002. In *International Salt Co.* v. *United States*, 332 U. S. 392 (1947), upon which plaintiff relies, the annual volume of business in the tied product was $500,000 in 1944 price-controlled dollars rather than the inflation-depreciated dollars of 1961. Moreover, to the extent that plaintiff does not claim that it would have bought (or have been able to buy) competing houses without Credit Corporation's financing,[45] there is no showing from which it can be inferred that there was any restraint of commerce in the tied product market.

45. Mr. Fortner's affidavit states only that "the plaintiff would not have purchased said home packages [from the Homes Division] but for the financial assistance offered by the Credit Corporation" (290a).

Conclusion

For all of the above reasons, the judgment below should be affirmed.

Respectfully submitted,

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II.

ARGUMENT

1. Did the Trial Court improperly grant the Defendants' Motion for Summary Judgment on the anti-trust issues when the facts clearly establish an illegal conspiracy by the Defendants which forced, through economic power and circumstances, an unlawful tying arrangement on Plaintiff which the Defendants then combined and conspired to enforce which was in violation of Sections 1 and 2 of the Sherman Act?

The District Court answered "No."

Plaintiff-Appellant answers "Yes."

This suit was filed charging violations of Sections 1 and 2 of the Sherman Act which provide in pertinent part:

> "§1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty.
>
> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal:"
>
> "§2. Monopolizing trade a misdemeanor; penalty.
>
> "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with a foreign nations, shall be deemed guilty of a misdemeanor, and, or conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

(51) The Plaintiff's claim is that the Defendants combined and conspired to establish an illegal tie-in arrangement whereby the Credit Corporation would require as a condition to the giving of its financing that the company using the financing would have to purchase prefabricated home packages from the Homes Division. Plaintiff submits that its evidence establishes that the combination and conspiracy existed and functioned as to Plaintiff and virtually all other borrowers from the Credit Corporation.

The Loan Agreements which the Credit Corporation required the Plaintiff to execute clearly require as a condition thereof that Plaintiff purchase and build the Homes Division packages.

The evidence establishes that the Homes Division personnel first approached Mr. Fortner. He was not initially particularly interested in their presentation but financing was mentioned and the Credit Corporation people then approached Mr. Fortner with offers of financing. These offers eventually got to the point that they were so unusual and unique in their terms as far as Plaintiff was concerned that Plaintiff agreed to purchase the Homes Division homes as a condition of the financing. The homes would not have been purchased but for the unusual and unique financial assistance offered (Fortner Affidavit, 290a).

The 100% loan for land development and acquisition and construction was certainly not available to Plaintiff elsewhere in 1960 and 1961, as both Mr. Fortner and Mr. Horn have testified (290a, 294a and 295a).

(52) An analysis of the cases pertaining to illegal tying arrangements is necessary to establish the basis for Plaintitiff's case. The first case of importance is the decision by the United States Supreme Court in *Interna-*

tional Salt Company v. *United States*, 332 U. S. 392, 92 L. Ed. 20. International Salt Company leased machinery for processing salt to some 900 customers in the year in question. Each of the 900 leases contained a condition which required the lessee to purchase salt consumed in the leased machine from International Salt. The provision was not absolute since the lessee could purchase salt from some other company if International Salt chose not to meet the price. International Salt's sale of salt during the year in question amounted to $500,000.00. The Supreme Court held the leases to be illegal tying agreements which were *per se* violations of Section of the Sherman Act. The argument was made in that case that evidence should have been heard on the question as to whether the restraint was unreasonable under the Sherman Act. The Supreme Court held that it is unreasonable, *per se*, to foreclose competitors from any substantial market. The Court held that the volume of business affected by the leases was not insignificant nor insubstantial. The Supreme Court also held that the provisions which allowed the lessee, to purchase salt of equal grade from competitors if offered at a lower price did *not* avoid the stifling effect of the agreement on competition. The Court then says that the mere fact of this tying clause had not always been insisted upon did not justify its general use. It (53) should be noted that the United States, not the defendant, was given a Summary Judgment in this case.

The next significant decision in the tying field is that of *Northern Pacific Railway Company* v. *United States*, 356 U. S. 1, 2 L. Ed. 2d 545. This case involved preferential routing clauses in deeds and leases from the Defendant to purchasers and lessors. This case sets forth the basic elements necessary for an illegal tying arrangement and the fact that they are *per se* violations of Section 1 of the Sherman Act (2 L. Ed 2d 549-550):

"However, there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. This principle of per se unreasonableness not only makes the type of restraints which are proscribed by the Sherman Act more certain to the benefit of everyone concerned, but it also avoids the necessity for an incredibly complicated and prolonged economic investigation into the entire history of the industry involved, as well as related industries, in an effort to determine at large whether a particular restraining has been unreasonable—an inquiry so often wholly fruitless when undertaken. Among the practices which the courts have heretofore deemed to be unlawful in and of themselves are price fixing. United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 210, 84 L. Ed. 1129, 1161, 60 S. Ct. 811; division of markets, United States v. Addyston Pipe & Steel (54) Co. CA 6 Tenn.), 85 F. 271, 46 LRA 122, aff'd 175 U. S. 211, 44 L. Ed. 136, 20 S. Ct. 96; group boycotts, Fashion Originators' Guild v. Federal Trade Com., 312 U. S. 457, 85 L. Ed. 949, 61 S. Ct. 703; and tying arrangements, International Salt Co. v. United States, 332 U. S. 392, 92 L. Ed. 20, 68 S. Ct. 12.

"For our purposes a tying arrangement may be defined as an agreement by a party to sell one product but only on the condition that the buyer also purchase a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier. Where such conditions are successfully exacted competition on the merits with respect to the

tied product is inevitably curbed. Indeed 'tying agreements serve hardly any purpose beyond the suppression of competition.' Standard Oil Co. v. United States, 337 U. S. 293, 305, 306, 93 L. Ed. 1371, 1382, 69 S. Ct. 1051. They deny competitors free access to the market for the tied product, not because the party imposing the tying requirements has a better product or a lower price but because of his power or leverage in another market. At the same time buyers are forced to forego their free choice between competing products. For these reasons 'tying agreements fare harshly under the laws forbidding restraints of trade.' Times-Picayune Publishing Co. v. United States, 345 U. S. 594, 606, 97 L. Ed. 1277, 1288, 73 S. Ct. 872. They are unreasonable in and of themselves whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a 'not substantial' amount of interstate commerce is affected. International (55) Salt Co. v. United States, 332 U.S. 392, 92 L. Ed. 20, 68 S. Ct. 12, Cf. United States v. Paramount Pictures, Inc., 334 U. S. 131, 156-159, 92 L. Ed. 1260, 1291-1293, 68 S. Ct. 941.'"

The Supreme Court then gives a very pointed discussion of the *International Salt* case which is very significant in terms of the present appeal (2 L. Ed. 2d 552):

"In our view International Salt Co. v. United States, 332 U.S. 392, 92 L. Ed. 20, 68 S. Ct. 12, which has been unqualifiedly approved by subsequent decisions, is ample authority for affirming the judgment below. In that case the defendant refused to lease its salt-dispensing machines unless the lessee also agreed to purchase all the salt it used in the machines from

the defendant. It was established that the defendant had made about 900 leases under such conditions and that in the year in question it had sold about $500,000 worth of salt for use in the leased machines. On that basis we affirmed unanimously a summary judgment finding the defendant guilty of violating §1 of the Sherman Act. The Court ruled that it was 'unreasonable, per se, to foreclose competitors from any substantial market' by tying arrangements. As we later analyzed the decision, 'it was not established that equivalent machines were unobtainable, it was not indicated what proportion of the business of supplying such machines was controlled by defendant, and it was deemed irrelevant that there was no evidence as to the actual effect of the tying clauses upon competition.' (56) Standard Oil Co. v. United States, 337 U. S. 293, 305, 93 L. Ed. 1371, 1381, 69 S. Ct. 1051.

"The defendant attempts to evade the force of International Salt on the ground that the tying product there was patented while here it is not. But we do not believe this distinction has, or should have, any significance. In arriving at its decision in International Salt the Court placed no reliance on the fact that a patent was involved nor did it give the slightest intimation that the outcome would have been any different if that had not been the case. If anything, the Court held the challenged tying arrangement unlawful *despite* the fact that the tying item was patented, not because of it. 'By contracting to close this market for sale against competition, International has engaged in a restraint of trade for which its patents afford no immunity from the antitrust laws.' 332 U. S., at 396. Nor have subsequent cases confined the rule of per se unreasonableness laid down in International Salt to situations involving patents. Cf. United States v.

Griffith, 334 U. S. 100, 92 L. Ed. 1236, 68 S. Ct. 941; United States v. Paramount Pictures, Inc., 334 U. S. 131, 156, 92 L. Ed. 1260, 1291, 68 S. Ct. 915; Times-Picayune Publishing Co. v. United States, 345 U. S. 594, 79 L. Ed. 1277, 73 S. Ct. 872."

The law on illegal tying arrangements has been even further explained in *United States* v. *Lowe's Inc.*, 371 U. S. 38, 9 L. Ed. 11. This case is of great significance since it holds that the crucial economic power over the tying product described in the *Northern Pacific* case may be inferred from the tying products' desirability to the consumer or from some uniqueness of its (57) attributes. In that case Lowe's tied the lease of inferior films to preferred films. The opinion recites:

> "Market dominance—some power to control price and to exclude competition—is by no means the only test of whether the seller has the requisite economic power. Even absent a showing of market dominance, the crucial economic power may be inferred from the tying product's desirability to consumers or from uniqueness in its attributes."

On that same page, footnote 4 states in pertinent part:

> "Since the requisite economic power may be found on the basis of either uniqueness or consumer appeal, and since market dominance in the present context does not necessitate a domination of market power in the sense of Section 2 of the Sherman Act, it should seldom be necessary in a tie-in case to embark upon a full-scale factual inquiry into the scope of the relevant market for the tying product and into the corollary problem of the seller's percentage share in that market."

Appendix

This Sixth Circuit Court of Appeals had in 1965 occasion to thoroughly explore the concept of tying arrangements in *Associated Press* v. *Taft-Ingalls Corporation*, 340 F. 2d 753, cert. denied 382 U. S. 320. This case involved a provision of the by-laws of the Associated Press, by which the predecessor of Taft-Ingalls had agreed to abide, which required subscribers to take and pay for certain wire services. There was a two year cancellation clause. When Taft-Ingalls bought the newspaper in question it wished to take only (58) one of the wire services and tried to arrange with the Associated Press to just take the one it desired. The Associated Press refused to allow this and insisted upon enforcing the contract as it stood. Taft-Ingalls promptly cancelled the service and the Associated Press sued for two years' fees for the services. Taft-Ingalls defended on the ground that this was an illegal tying agreement under Sherman Act Section 1.

This Court held this to be an illegal tying agreement. It found that the desired service was unique as far as Taft-Ingalls was concerned and was the tying "product." The uniqueness to Taft-Ingalls gave the Associated Press sufficient economic power over the trying "product" to impose the prohibited restrictions. There was found to be sufficient evidence of the amount of interstate commerce restrained to meet the remaining test that a not insubstantial amount of interstate commerce was involved. This Court sustained the defense of illegality. Since Taft-Ingalls' proof as to damages on its counterclaim alleging violation of the antitrust laws was speculative, the Court directed that that claim be dismissed for that reason.

The above cases thus require the following elements:

1. A tying arrangement.

2. Sufficient economic power over the tying product.

3. To impose an appreciable restraint on free competition in the tied product affecting a not insubstantial amount of interstate commerce..

4. Evidence of actual harm to competition or the extent of such harm is not required.

(59) There is overwhelming evidence in the record on all four elements listed above in favor of the Plaintiff.

That the tying arrangement existed can be found in the Loan Agreements themselves (24a through 37a), the Defendants' Answer (58a) the Credit Corporation's Answers to Interrogatories (166a through 168a) and from the mouths of their own officers (871a through 873a).

That the type of 100% financing offered by the Credit Corporation was unusual and unique in the Jefferson County, Kentucky area and to the Plaintiff in particular can be found in the Affidavits of A. B. Fortner (290a) and Edwin Horn (294a and 295a), and this evidence is undisputed. As a matter of fact William H. Lang, President of the Credit Corporation, and Richard Dyas, Vice-President of the Credit Corporation, has admitted that their financing was given under circumstances where ordinary financing was not available (832a and 857a).

The tying "product" in this case is the loan of money under unusual and unique *terms,* not simply money as such. The terms under which the loans were offered gave the Credit Corporation the leverage it needed to force the purchase of the home packages. It is significant that 68% of the Homes Division's sales in 1960 involved loans from the Credit Corporation, 70% in 1961 and 75% in 1962. It is also most significant that all but a few of the loans made by Credit Corporation during those years involved Loan Agreements with the tying clause contained therein.

(60) On a comparative basis for 1960, 1961, and 1962, we find that loans of the Credit Corporation generated sales of Homes Division at the above percentages as follows:

Year	*Credit Corporation Loans*	*Homes Division Sales*
1960	$22,625,805.00	$3,971,217.76
1961	19,342,612.00	2,823,383.50
1962 (Through Sept.)	19,283,544.00	2,289,819.00

The loans exceeded sales by more than five times in 1960, and more than six times in 1961 and 1962. This is clearly the exercise of naked economic power generated by the vast wealth of United States Steel Corporation.

But the Defendants did not stop with the original promulgation of the Loan Agreements on their unusual and unique basis. When they were told that the tied product, the homes, were defective and that the reputation of Plaintiff's subdivision was rapidly going downhill and that Plaintiff had to be relieved of the restrictive tying clause, Plaintiff was told by Credit Corporation that it had to build the Homes Division houses on its subdivision or else. Plaintiff attempted to obtain relief from this restriction provision from about November, 1961 until May, 1962, while explaining to the Credit Corporation that it could pay off the loans if conventional or other homes could be built. The President of the Credit Corporation has testified that they intended to enforce the tying clause (840a). Plaintiff was repeatedly rebuffed even though the evidence shows overwhelming merit in Plaintiff's position (61) concerning the homes. There is a strong parallel here to

the *Associated Press* case, *supra,* where the Associated Press insisted on Taft-Ingall's taking all the wire services.

The repeated rebuffs are not surprising once the evidence is analyzed. As a result of the conspiracy between the officers of the Credit Corporation and the Homes Division, as demonstrated by the correspondence, memoranda, and their actions, the Credit Corporation became a tool of the Homes Division and it acts, and acted, accordingly. The Defendants anticipated a takeover of Plaintiff's property even before the first Loan Agreement was signed. The Credit Corporation carried on the program authorized by the Finance Committee of United States Steel of generating sales for Homes Division, there can be no doubt of that. Seventy house packages were sold to Plaintiff for at least a total of $210,000.00. The 55 house packages purchased by Plaintiff in 1961, at an average of $3,000.00 each which is the price for the lowest priced model, amounted to $165,000.00, or about 4% of Homes Division's sales for that year. It had been anticipated by Credit Corporation and Homes Division that the loans to Plaintiff would generate sales of 220 house packages in 1961 and 1962.

That competition was foreclosed by the tying arrangement here cannot really be disputed from the record. Not only was competition deliberately foreclosed by the Credit Corporation from the Plaintiff's subdivision, it was foreclosed from substantial business in the states in which the Credit Corporation did business (62) by the loans made in all of those states which resulted in $4,000,000.00 of sales in 1960, $2,800,000.00 in 1961 and $2,300,000.00 in 1962. Contrast this with the $500,000.00 of competition foreclosed in the sales of salt in the *International Salt Company* case, *supra.* This $500,000.00 was held to be a not insubstantial amount of interstate commerce. The Defendants had effectively foreclosed from competition by their agreements and

conduct with Plaintiff about 220 locations for homes at $3,000.00 per house package, or $660,000.00 worth of interstate commerce.

Whether the Defendants be treated as one entity or two under the above facts would not matter as could be seen from the above cases. The fact that two separate corporate entities do exist make this even a stronger case, however.

Section 1 of the Sherman Act prohibits all contracts, combinations and conspiracies in restraint of trade or commerce. The Loan Agreements themselves are such contracts. The Defendants have combined and conspired to have such contracts entered into by Plaintiff and others. The accepted definition of conspiracy under the antitrust laws is:

> "A conspiracy is a combination of two or more persons to accomplish an unlawful end by lawful means or a lawful end by unlawful means," *U. S.* v. *Addyston Pipe and Steel Company,* 85 F. 271 (Sixth Circuit, 1898)."

The Seventh Circuit Court of Appeals in *United Sates* v. *General Motors Corporation,* 121 F. 2d 376, (63) Cert. denied 314 U. S. 618, has specifically held that General Motors atempts to have its dealers exclusively use General Motors Acceptance Corporation to provide the financing for the dealers wholesale purchases and the dealer's customer's purchases of new and used cars by conditioning such use in the awarding of dealer franchises and by other coercive acts such as short term contracts constituted a conspiracy violative of the Sherman Act (p. 402). The Court also holds that non-competitors can conspire to achieve an unlawful situation and then holds that General Motors and GMAC could not enjoy the benefits of separate

corporate entity and escape the consequences of an illegal combination in restraint of trade (p. 404).

In another case, *Kiefer-Stewart* v. *Joseph Seagram Company,* 340 U. S. 211 (1950), which involved Seagram Distillery and Calvert Distillery, mutually owned, the Supreme Court held that it was illegal for these separate corporate entities to conspire to maintain maximum resale prices. See also *United States* v. *Yellow Cab Company,* 332 U. S. 218.

As was found in the *General Motors* case, *supra,* financing can be a tied "product" under the Sherman Act. That is can be a tying "product" under the Sherman Act will be found in *Trans-World Airlines, Inc.* v. *Hughes,* 332 F. 2d 602 (1964), which involved allegations in the pleadings that the defendant, Hughes Tool Company, had conditioned its financing to T. W. A. on T. W. A. only purchasing its airplanes from Hughes. The Second Circuit Court of Appeals held that this allegation *on its face* charged an illegal tying arrangement (64) under the antitrust laws (p. 611). The Supreme Court initially granted certiorari and the case was extensively briefed and argued. The Supreme Court then dismissed the Writ of Certiorari as having been improvidently granted (380 U. S. 248, 249), thus leaving the Second Circuit opinion as the law.

The Complaint and Amended Complaint in this case also charge the Defendants with violation of Section 2 of the Sherman Act in that they combined or conspired to monopolize a part of the trade or commerce among the several states. The conspiracy to monopolize under Section 2 requires a mere showing of intent to monopolize a part of trade or commerce, but "monopoly power" does not have to be established. It is sufficient if some appreciable part of interstate commerce is the subject of the conspiracy. *United States* v. *Consolidated Laundries Corpora-*

tion, 291 F. 2d 563 (1961), at page 573. The dollar volume of commerce involved in that case was $523,168.00 (p. 572) which the Court held was sufficient, citing the *International Salt* case, *supra*.

It has been held that proof of a conspiracy to monopolize may be established without showing that the conspirators acquired power to carry out the object of the conspiracy. *American Tobacco Co.* v. *U. S.*, 328 U. S. 781, and *U. S.* v. *Griffith*, 334 U. S. 100.

The obvious purpose and intent of the Defendants in this case was to obtain as large a share of the prefabricated home market of Jefferson County, Kentucky and of the entire market area serviced by the Defendants. Their combination and conspiracy which (65) used unlawful means to attain this end, including coercive acts against the Plaintiff to maintain the position and effectuate their purpose, clearly had as its ultimate goal the obtention of as large a market share as possible with the accompanying power to control prices and exclude competitors. They were already exercising the power to foreclose or exclude competitors by use of their unlawful tying agreements.

Plaintiff submits that it has established overwhelming evidence of a violation of Section 1 of the Sherman Act and that it has certainly submitted sufficient evidence to go to a jury on the charge of conspiracy to monopolize.

Let us now turn to the evidence and law relied upon by the Defendants. As a preface it should be pointed out that the Memorandum Opinion (309a through 322a) of the District Court insofar as it pertains to the antitrust claims is identical with the "Findings of Fact and Conclusion of Law" tendered by Defendants (297a through 309a).

It was a shock to Plaintiff to see that the District Court had adopted the document tendered by Defendants with its reliance solely on the facts and law relied upon by Defendants and which virtually ignores the Plaintiff's theory of the case and the applicable law.

Appendix

A reading of the Memorandum Opinion would give one the impression that the District Court is being rather strict with the Plaintiff as a result of the citation of statutes in the Complaint. The Court was not critical of Plaintiff as the initial oral argument on the Motion for Summary Judgment after counsel had explained (66) the intended meaning of paragraph 1 of the Complaint. In looking at paragraph 1 (18a), we find that it and the two succeeding paragraphs are the jurisdiction and venue paragraphs. Co-counsel for the Plaintiff was formerly with the Antitrust Division of the Department of Justice and attempted in the Complaint to follow the format generally used by the Department of Justice. The Complaint invokes the jurisdiction of the Federal Courts under Sections 4 and 16 of the Clayton Act. The citation of Section 4 of the Clayton Act is 15 U. S. Code, Sec. 15 (886a), but it was merely cited incorrectly as a result of a typographical error as 15 U. S. Code, Sec. 14 in the Complaint. Section 4 of the Clayton Act is the section giving a private litigant the right to sue for treble damages. Section 16, 15 U. S. Code, Sec. 26 (886a and 887a) gives a private litigant the right to seek injunctive relief.

Paragraph 1 of the Complaint then specifically indicates that the violations of the antitrust laws charged are under Sections 1 and 2 of the Sherman Act. This is quite clear under the "Offenses Charged" portion of the Complaint beginning with paragraph 12 and continuing through paragraph 17 (21a through 23a).

The reason that a charge was not also brought under Section 3 of the Clayton Act is that it speaks in terms of goods, wares or commodities which might well not be applicable to financing as a tying entity.

Plaintiff has always claimed damages and sought injunctive relief on the basis of violation of Sections 1 and 2 of the Sherman Act.

(67) The Defendants conceded the tying condition in the Loan Agreements and the Court has so found. Whether Plaintiff was or was not a dormant corporation with an existing loss when the first Loan Agreement was signed merely adds to Plaintiff's case since it makes it even more obvious that 100% financing was most unusual, unique and attractive to Plaintiff (310a).

The Court finds as a fact that the sole underlying function of the Credit Corporation is to enable its co-defendant, United States Steel Corporation, to compete with others (311a). The Plaintiff's point in this lawsuit is that the Credit Corporation has conspired with the Homes Division to enable Homes Division to compete in an improper manner by *foreclosing* competition by use of the tying arrangement. Whether competitors are also operating in an equally illegal manner does not place the stamp of condonation or approval on the Defendants. As a matter of fact, the record shows that the Credit Corporation in the liberality of its financing went far beyond competitors in the terms of its loans (377a) and its Vice-President did not even know what terms its competitors were offering (859a). The fact is that Credit Corporation was being used as a tool to generate Homes Division sales regardless of cost.

The Court makes much of Plaintiff's tendered instructions (280a). It will be noted that paragraph 1 of those tendered instructions succinctly gives Plaintiff a directed verdict on a finding of a conspiracy as a matter of law which required Plaintiff to purchase the Homes Division homes in violation of Sections 1 and 2 (68) of the Sherman Act. It has consistently been Plaintiff's position that the evidence does and would show such a conspiracy and that Plaintiff at a trial would be entitled to a directed verdict on the liability question as a matter of law. The

Plaintiff's instructions, therefore, set forth that theory. The coercive conduct of the Defendants following the execution of the Loan Agreements is a part of the overall conspiracy.

It will be noted that the Court indicates that ample funds were available in Louisville, Kentucky, for lending and that Credit Corporation had no "monopoly" on money. This carefully ignores the Affidavits of A. B. Fortner and Edwin Horn which indicate that it is not the general availability of money which is important here but the terms under which that money is available which is significant. One of the chief money lenders in Louisville, Edwin Horn, President of Louisville Mortgage Service Company, has stated that loans made by Credit Corporation to Fortner were unique and unusual and that money on such terms was not available from other sources in Louisville in 1960 through 1962. Certainly the borowing of money on the terms given, 100% of value for land acquisition, development and construction, was advantageous to Plaintiff. This was what was attractive to Plaintiff and made the financing uniquely compelling to Plaintiff. The horrendous result was that which Plaintiff did not anticipate. The advantages to Defendants were that they had tied up a captive market here and elsewhere for house packages while getting interest and ½ point on their loans.

(69) No party is coerced or compelled by force to sign tying agreements. Economic circumstances can necessitate the signing of such agreements just as they did in the *International Salt, Northern Pacific* and *Associated Press* cases, *supra.*

The Court places significance on that fact that the Loan Agreements, etc., were limited to a particular area of ground (313a). Legally this is of no significance since Plaintiff's proof meets the tests of the applicable cases. In direct point here is the *International Salt* case where

the salt which was required to be purchased under the tying agreements there was only that used in the International Salt Company machines and total sales of that salt to all 900 leaseholders amounted to only $500,000.00.

The Court in talking generally about money and land available has simply missed the point as to the applicable law.

Another point which the Court below deemed applicable was the claim by Defendants that Plaintiff could pay off the loans and be relieved of the obligations to purchase Homes Division houses. First, it is questionable from a reading of the Loan Agreement and other documents that Plaintiff could have relieved itself of that obligation by paying off the loans. The mortgage (45a) merely provides that the *conveyance* would become null and void upon payment of all sums due. But the mortgage also (44a) requires Plaintiff to perform each undertaking contained in the Loan Agreement. We have already seen that the Loan Agreement requires Plaintiff to erect on each lot a (70) house manufactured by United States Steel Homes Division (26a), and that the lien will be released only when proof has been furnished that a house manufactured by United States Steel Homes Division has been erected on each lot. It should also be noted that the land notes for purchase and development money would be paid off when the subdivision was about two-thirds completed but Plaintiff still had to furnish proof that a Homes Division house had been erected on *each* lot before the lien would be released. Secondly, it can clearly be inferred from the record that Plaintiff had been placed in a situation by the conduct of Defendants which made it impossible for Plaintiff to pay off any one, including the Credit Corporation. Thirdly, the record shows that the Plaintiff offered to pay the Credit Corporation and stated that it could pay off the

loans if relieved of the restrictive provisions of the Loan Agreements but the Credit Corporation adamantly refused. Here is evidence of the illegal intent of the Defendants. Fourthly, assuming that Plaintiff could have paid off the loans, this is completely immaterial under the law. In the *International Salt* case the lessees could have cancelled the leases and relieved themselves of the restraint. That specific question was raised in *Osborn* v. *Sinclair Refining Company,* 286 F. 2d 832 (C.A. 4th, 1960), in which the argument was made that the alleged tie-in was not exclusive in that the buyer was not required to take all his requirements from Sinclair (p. 838). The Court of Appeals also stated:

> (71) "The economic effect of the tying arrangement, not the degree of exclusivity, is the pertinent issue. The facts as found by the District Court make it clear that the power of Sinclair to appreciably restrain competition in TBA stemmed from Sinclair's position as supplier of more than 10% of the gasoline sold in the state of Maryland, and as gasoline supplier to more than 10% of the stations in the state, including the station leased to Osborn. The finding was that a not insubstantial amount of commerce is affected."

The Court in *Osborn* v. *Sinclair Refining Company, supra,* then held on facts parallel to those in the present case that there was a tie-in which unreasonably restrained competition. The Court at page 840 points out that arguments about monopoly and the "rule of reason" were beside the point since a tie-in is unreasonable *per se.*

The District then misconstrues the nature of the tie-in arrangement by talking about Plaintiff being able to purchase from Homes Division regardless of the loans. The houses were the *tied,* not the *tying* product. Certainly Plaintiff could have purchased the house packages whether

the loans were present or not. This was the product the Defendants wanted to sell. This is like the Defendant in the International Salt case claiming that its customers could have purchased salt from them even though they did not lease the machines. International Salt would obviously sell salt to any one and was using its leases to force sales of salt. (72) The District Court appears to have the tying and tied products reversed as a result of the confusion created by counsel for Defendants.

Plaintiff takes great exception to the language in the first paragraph of the Conclusions of Law section (315a) of the Court's Memorandum Opinion which alludes to an abandonment of a claim under Section 3 of the Clayton Act or to an "erroneous" complaint. This, of course, was caused by the literal adoption of the language proposed by Defendants.

The Memorandum Opinion (316a) gets the cart before the horse to a certain extent in saying that the Plaintiff must first prove the contracts illegal and then it could proceed to prove conspiracy, and if conspiracy is proven, then to prove damages. There is no precedent under the antitrust laws for such a proposition. The violation alleged is a contract, combination and conspiracy to violate Sections 1 and 2 of the Sherman Act. The evidence is that there was a combination and/or conspiracy under the meaning of the antitrust laws to impose the tying agreement on Plaintiff, with the agreement being the contract in restraint of trade. There was further subsequent coercive action taken to further the combination and conspiracy and the contract. The fact of conspiracy is important as bearing on the initial violations and liability.

The Court correctly cites the *Northern Pacific* case (317a) and then ignores the later controlling Supreme Court and Court of Appeals decisions and interprets

"sufficient economic power" as being monopoly power from a District Court decision, and *Times-Picayune* (73) *Publishing Co.* v. *United States*, 345 U. S. 594. The *Times-Picayune* case has been limited to its facts and is not regarded as controlling. See the discussion of *Times-Picayune* in the later *Northern Pacific* case, 356 U. S. 1, at pp. 10 and 11.

Contrary to the Memorandum Opinion (317a), Plaintiff has consistently argued that the Credit Corporation had sufficient economic power with respect to the tying product (financing) through the unique, unusual and attractive nature of the terms of its financing. This is clearly within the principles of the *Lowe's* and *Associated Press* cases, *supra*. The astounding conclusion then reached (318a) is that "obviously others, if they chose, could lend to Plaintiff money on the same terms and conditions as defendant Credit Corporation." This is a conclusion of fact or law made with no evidentiary support and smack in the face of the Affidavits of A. B. Fortner and Edwin Horn. The Court then says that the test is universal compulsion. There are and cannot be cited any cases to support this conclusion. There was no universal compulsion in the *Associated Press* case. That case specifically holds that the test was the unique desirability of one wire service to the Cincinnati newspaper which was sufficient and that who could better say what was unique or desirable than the *consumer himself*.

The Court then applies a relevant market concept concerning the tied product, the homes. The Court has stated that the test is that the tie-in result in a "substantial restraint upon competition in the market for the tied service" (318a). The actual rule of the Supreme (74) Court, quoted from *Northern Pacific*, is that "* * * a not insubstantial amount of interstate commerce is affected." As has previously been pointed out, there is no relevant

market test in the tie-in cases. As *Northern Pacific* and *International Salt* teach, the amount of interstate commerce of the tied product affected need only be more than *de minimus*. *International Salt* involved $500,000.00 of sales in the tied product. Speaking in terms of housing starts or amount of land available is therefore of no significance. What is significant is that the tie-in as to Plaintiff involved potential sales of $660,000.00, actual sales of $210,000.00, and that total sales affected by the tie-in agreements exceeded $3,000,000.00 in 1960 through 1962.

The Court was clearly influenced by *Tampa Electric Co.* v. *Nashville Co.*, 365 U. S. 320. The *Tampa Electric* case was not a tie-in case! It was a requirements contract case involving only one product where the *per se* rules of unreasonableness were not applicable. The relevant market concept then did come into play in that case, involving shares of market. This case holds at page 334 specifically that the requirements contract involved there was not a plainly restrictive tying arrangement, citing *International Salt, supra.*

The Tampa Electric case makes a statement at page 335 that the Defendants have twisted to their own purposes. The Supreme Court there held that Section 3 of the Clayton Act is broader in its coverage than are Sections 1 and 2 of the Sherman Act and that if the requirements contract in question in that case did not violate Section 3 it could not be a violation of Sherman (75) Act 1 and 2. The history of Section 3 of the Clayton Act is that it was passed to cover a possible loophole left in Sherman Act 1 and 2 with the intent of stopping certain restrictive practices at their outset which might in the future lessen competition or create an actual tendency to monopoly (see page 326 of the *Tampa Electric* opinion). This case recognizes itself that the necessity of direct

proof of economic impact of a tying contract is not required (p. 326).

While there may be some place in the law for summary judgments in antitrust cases, the Supreme Court in 1962 held that these procedures should be used sparingly, "trial by affidavit being no substitute for trial by jury, *Poller* v. *Columbia Broadcasting System,* 368 U. S. 464, 7 L. Ed. 2d 458, 82 S. Ct. 486." The *Poller* case involved allegations of conspiracy and on its facts is a much less appealing antitrust case than the present suit. The Supreme Court held emphatically that the defendant CBS was not entitled to Summary Judgment.

Summary

The evidence in the record establishes:

1. The Defendants approached Plaintiff.
2. The Defendants made unusual, unique and attractive offers of financing to Plaintiff.
3. The Defendants' purpose was to use Plaintiff to to obtain or expand their entry in the Louisville market.
4. As a condition of the unusual, unique and attractive financing, the Defendants required (76) Plaintiff to agree only to purchase and build in its subdivision homes manufactured by United States Steel.
5. The Defendants conspired to make this requirement.
6. A program of sales was opened and a number of sales were made through vigorous efforts of Plaintiff.

7. After the program had been started and as the first of the houses were completed and occupied numerous complaints attributable to Defendant, Homes Division, defects in the house packages arose.

8. The complaints and defects resulted in loss of profits to Plaintiff, loss of interest by the sales force and loss of reputation of the subdivision.

9. Plaintiff on a number of occasions asked to be allowed to build other houses besides Homes Division houses in the subdivision and was refused.

10. Meanwhile the Homes Division refused to do more than replace defective parts.

11. Homes Division furnished defective interior walls which could not be satisfactorily repaired and for which Homes Division would give no compensation.

12. Matters got so bad that Plaintiff could not sell houses in the subdivision.

13. At a showdown meeting in May, 1962, Defendants were formally requested to relieve Plaintiff from the restrictive tying provisions of the Loan Agreements and were steadfastly refused even though told that the loans would and could be paid off if such relief were granted.

(77) 14. The initial illegal conspiracy to obtain the restrictive Loan Agreement and following conspirational conduct to enforce the contract, combination and conspiracy did great and irreparable damage to Plaintiff.

15. The conspiracy was not limited to Plaintiff but covered all those with whom Credit Corporation dealt.

16. Approximately 70% of the Homes Division sales were accounted for by Credit Corporation Loans Agreements in numerous states containing the restrictive tying clause in 1960, 1961 and 1962.

17. Credit Corporation loans of about $22,000,000 in 1960, $19,000,000 in 1961 and $19,000,000 in 1962 were used to obtain $3,971,217.76 of Homes Division sales in 1960, $2,823,383.50 in 1961 and $2,289,819.00 in 1962. This is not an insubstantial amount of interstate commerce in the tied product.

18. The contract with Plaintiff alone involved a minimum of $600,000.00 of sales of the tied product and at least $210,000.00 of sales of the tied product actually occurred, which in itself is not insubstantial.

The necessary elements of violations of Sections 1 and 2 of the Sherman Act are all overwhelmingly present in this case and the Defendants were not entitled to Summary Judgment!

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QUESTIONS PRESENTED.

I. Respondents have abandoned previous arguments and now extensively argue facts to support their position.

II. Petitioner has consistently argued throughout this litigation that the defendants were guilty of an unlawful conspiracy to monopolize violative of Section 2 of the Sherman Act.

III. The evidence establishes all elements of an illegal tying agreement which is a *per se* violation of Section 1 of the Sherman Act.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 306

FORTNER ENTERPRISES, INC., - - - - *Petitioner,*

v.

UNITED STATES STEEL CORPORATION,
U. S. STEEL HOMES CREDIT CORPORATION, *Respondents.*

REPLY BRIEF FOR PETITIONER.

ARGUMENT.

I.

Respondents Have Abandoned Previous Arguments and Now Extensively Argue Facts to Support Their Position.

Respondents have devoted the first thirty pages of their brief to an alleged Statement of the Case which is an extensive argument of facts and inferences which they draw from the facts. Many of the alleged facts relied upon are out of context or contrary to facts relied upon by Petitioner. This same procedure is followed in the argument portion of the brief. Respondents' brief sounds more like an argument before a jury, vainly trying to draw inferences which favor their side.

Petitioner has set forth in its brief many of the facts favorable to it which clearly show that summary judgment in Respondents' favor was not warranted. When reviewing a Summary Judgment all facts and inferences most favorable to the one against whom the Judgment went must be reviewed. This Court has said in *Poller* v. *Columbia Broadcasting System,* 368 U. S. 464, 7 L. Ed. 2d 458 (1962), at page 473:

> "We look at the record on summary judgment in the light most favorable to Poller, the party opposing the motion, and conclude here that it should not have been granted. We believe that summary procedures should be used sparingly in complex antitrust litigation where motive and intent play leading roles, the proof is largely in the hands of the alleged conspirators, and hostile witnesses thicken the plot. It is only when the witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised. Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of 'even handed justice'."

Respondents repeatedly attack the creditability of Petitioner's witnesses, Fortner and Horn, and raise questions about their affidavits. Respondents caused these affidavits to be filed by making the Motion for Summary Judgment. Those affidavits and the other evidence relied upon by Petitioner establish the offenses charged.

Petitioner will not dignify a detailed factual jury type argument with an item by item reply since those

facts must be viewed in the light most favorable to Petitioner. Petitioner is prepared to respond to any of the inferences Respondents draw in their favor if the Court so desires.

It is clear from the beginning of Respondents' brief that they have abandoned the arguments they made before the District Court and the Sixth Circuit. The reason for their factual argument is found in the following quotation from page 4 of their brief:

> "Moreover, the detailed record treatment is offered to facilitate this Court's independent review apart from the opinion of the District Court, since the decision of a lower court will be affirmed if the result is correct even though the decision relies upon wrong grounds. Helvering v. Gowron, 302 U. S. 238 (1937)."

Petitioner submits that counsel who wrote Respondents' brief recognized the invalidity of the position taken below and has laboriously attempted to justify that position by factual argument.

II.

Petitioner Has Consistently Argued Throughout This Litigation That the Defendants Were Guilty of an Unlawful Conspiracy to Monopolize Violative of Section 2 of the Sherman Act.

There is and has always been two phases to Petitiner's case. First, we have and do argue that United States Steel Corporation and U. S. Steel Homes Credit Corporation conspired to establish with Petitioner an illegal tying agreement and that they then conspired

to coerce enforcement of that illegal agreement and that this is a *per se* violation of Section 1 of the Sherman Act.

Secondly, we have urged and do urge that the above conspiracy was part of a broader conspiracy to monopolize violative of Section 2 of the Sherman Act by use of their power in the lending area through contracts (loan agreements) which eliminate competition with Homes Division by use of the restricted tie-in clauses.

The firm of White and Case and its representative, Macdonald Flinn, first became involved with this litigation after the Petition for Certiorari had been filed with this Court. From the draft of the Respondents' Brief served on Petitioner's counsel on January 2, 1969, pursuant to this Court's ruling, that firm wrote Respondents' Brief. If counsel for that firm had been present at the argument before the District Court, he would know that the argument on conspiracy to monopolize was made at that time. We need merely refer the Court to pages 64 and 65 of our Brief to the Sixth Circuit (Respondents' Appendix, pages 13a and 14a), to see that the argument was made in that Court:

> "The Complaint and Amended Complaint in this case also charge the Defendants with violation of Section 2 of the Sherman Act in that they combined or conspired to monopolize a part of the trade or commerce among the several states. The conspiracy to monopolize under Section 2 requires a mere showing of intent to monopolize a part of trade or commerce, but 'monopoly power' does not have to be established. It is sufficient if some

appreciable part of interstate commerce is the subject of the conspiracy. *United States* v. *Consolidated Laundries Corporation*, 291 F. 2d 563 (1961), at page 573. The dollar volume of commerce involved in that case was $523,168.00 (p. 572) which the Court held was sufficient, citing the *International Salt* case, *supra*.

"It has been held that proof of a conspiracy to monopolize may be established without showing that the conspirators acquired power to carry out the object of the conspiracy. *American Tobacco Co.* v. *U. S.*, 328 U. S. 781, and *U. S.* v. *Griffith*, 334 U. S. 100.

"The obvious purpose and intent of the Defendants in this case was to obtain as large a share of the prefabricated home market of Jefferson County, Kentucky and of the entire market area serviced by the Defendants. Their combination and conspiracy which (65) used unlawful means to attain this end, including coercive acts against the Plaintiff to maintain the position and effectuate their purpose, clearly had as its ultimate goal the obtention of as large a market share as possible with the accompanying power to control prices and exclude competitors. They were already exercising the power to foreclose or exclude competitors by use of their unlawful tying agreements.

"Plaintiff submits that it has established overwhelming evidence of a violation of Section 1 of the Sherman Act and that it has certainly submitted sufficient evidence to go to a jury on the charge of conspiracy to monopolize."

The matter was also argued orally before the Sixth Circuit.

Petitioner's pleadings, evidence, and arguments in all courts set forth the foundation for this charge and it is properly an issue before this Court.

Respondents do not respond to Petitioner's claim that there was evidence of a conspiracy to monopolize under Section 2 of the Sherman Act other than to claim that the issue was not raised below. Respondents, by their failure to so respond, have therefore admitted that it was improper to grant them Summary Judgment.

III.

The Evidence Establishes All Elements of an Illegal Tying Agreement Which Is a *Per Se* Violation of Section 1 of the Sherman Act.

Respondents' argument from pages 39 through 55 of their Brief is a factual one really designed to create a factual issue. Respondents overlook the fact that they are charged with a conspiracy and contract in violation of Section 1 of the Sherman Act. They attempt to treat themselves as one entity. They do not deny that they are chargeable as conspirators and they cannot.

Respondents argue that *United States* v. *Loew's, Inc.*, 371 U. S. 38, 45 (1962), does not mean what it says. The plain language of that case is that the requisite economic power in the tying element can be inferred from its desirability to consumers and uniqueness in attributes. The evidence most favorable in

the record to Petitioner meets both. The financing on the terms offered was unique in attributes and desirable to the consumer, Petitioner. Respondents' own records show that their loans were unique. The loans were the "tool" which enabled the Homes Division to make about 70% of its sales during the years in question.

The principal case relied upon by Respondents, *FTC* v. *Sinclair Refining Co.*, 261 U. S. 463 (1923), is not in point on its facts and is long before the tie-in cases decided by this Court which are our present law. *International Salt Co.* v. *United States*, 332 U. S. 392 (1947), *Northern Pacific Railway Co.* v. *United States*, 356 U. S. 1 (1958), and *United States* v. *Loew's, Inc.*, 371 U. S. 38 (1962).

In a case cited by Respondents this Court stated in 1963 in *White Motor Co.* v. *United States*, 372 U. S. 253, 263 (1963):

> "We recently noted the importance of the nature of the tying arrangement in its factual setting:
>
> > 'Thus, unless the tying device is employed by a small company in an attempt to break into a market, cf. Harley-Davidson Motor Co., 50 F.T.C. 1047, 1066, the use of a tying device can rarely be harmonized with the strictures of the antitrust laws, which are intended primarily to preserve and stimulate competition.' Brown Shoe Co. v. United States, 370 U. S. 294, 330, 8 L. Ed. 2d 510, 538, 82 S. Ct. 1502."

Surely United States Steel and its subsidiary, U. S. Steel Homes Credit Corporation, do not claim that they are struggling small business concerns seeking to enter a new market!

To our amazement, Respondents, at page 49 of their Brief, equate themselves to the Government by arguing that the Government conditions performance on its financial assistance. The Government has the power to do so, plus the power to fix prices, to tax and to condemn, but this does not confer such rights on Repondents.

The typical financial transaction involves a lender loaning money and obtaining adequate security. There is nothing unusual or unique about the usual transaction. Where financing is used as a "tool" to create a restraint on competition and the financing is unique by its terms and desirable to consumers, the requisite economic power is present.

We have given the evidence we rely upon to support our position that the amount of commerce restrained as to the tied product exceeded the sum of $500,000.00, used in *International Salt, supra.* The loan agreements with Petitioner involved 219 houses. Even using Respondents' figures for .55 houses of $189,002.00, this was one-fourth of the houses Petitioner was required to buy. Thus, for all 219 we would have in excess of $750,000.00 of commerce in the tied product, using Respondents' own figures.

CONCLUSION.

Respondents cannot rely upon inferences favorable to them and attack Petitioner's witnesses to justify a Summary Judgment which they admit was entered on improper grounds. Petitioner has maintained and still maintains that the tie-in agreement was illegal *per se* and that the Respondents conspired to obtain its entry and to enforce it. Petitioner's evidence justifies this position. Respondents appear to be attempting to create a factual issue which likewise justifies reversal.

Petitioner has consistently through the courts maintained its charge under Section 2 of the Sherman Act of conspiracy to monopolize and has never waived or abandoned it. Respondents have not responded to this charge and therefore admit at least that Summary Judgment as to that charge was not warranted.

The Summary Judgment should be reversed and the relief sought in Petitioner's Brief should be granted.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 306.—October Term, 1968.

Fortner Enterprises, Inc., Petitioner, *v.* United States Steel Corp. et al.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April 7, 1969.]

Mr. Justice Black delivered the opinion of the Court.

This case raises a variety of questions concerning the proper standards to be applied by a United States district court in passing on a motion for summary judgment in a civil antitrust action. Petitioner Fortner Enterprises, Inc., filed this suit seeking treble damages and an injunction against alleged violations of §§ 1 and 2 of the Sherman Act, 15 U. S. C. §§ 1, 2. The complaint charged that respondents, United States Steel Corp. and its wholly owned subsidiary, the U. S. Steel Homes Credit Corp., had engaged in a contract, combination, and conspiracy to restrain trade and to monopolize trade in the sale of prefabricated houses. It alleged that there was a continuing agreement between respondents "to force corporations and individuals, including the plaintiff, as a condition to availing themselves of the services of United States Steel Homes Credit Corporation, to purchase at artificially high prices only United States Steel Homes . . . ." Specifically, petitioner claimed that in order to obtain loans totaling over $2,000,000 from the Credit Corp. for the purchase and development of certain land in the Louisville, Kentucky, area, it had been required to agree, as a condition of the loans, to erect a prefabricated house manufactured by U. S. Steel on each of the lots purchased with the loan proceeds. Petitioner claimed that the prefabricated materials were then supplied by U. S. Steel at unreasonably high prices

and proved to be defective and unusable, thus requiring the expenditure of additional sums and delaying the completion date for the development. Petitioner sought treble damages for the profits thus lost, along with a decree enjoining respondents from enforcing the requirement of the loan agreement that petitioner use only houses manufactured by U. S. Steel.

After pretrial proceedings in which a number of affidavits and answers to interrogatories were filed, the District Court entered summary judgment for respondents, holding that petitioner's allegations had failed to raise any question of fact as to a possible violation of the antitrust laws. Noting that the agreement involved here was essentially a tying arrangement, under which the purchaser was required to take a tied product—here prefabricated homes—as a condition of being allowed to purchase the tying product—here credit, the district judge held that petitioner had failed to establish the prerequisites of illegality under our tying cases, namely sufficient market power over the tying product and foreclosure of a substantial volume of commerce in the tied product. The Court of Appeals affirmed without opinion, and we granted certiorari, 393 U. S. 820 (1968). Since we find no basis for sustaining this summary judgment, we reverse and order that the case proceed to trial.

We agree with the District Court that the conduct challenged here primarily involves a tying arrangement of the traditional kind. The Credit Corp. sold its credit only on the condition that petitioner purchase a certain number of prefabricated houses from the Homes Division of U. S. Steel. Our cases have made clear that, at least when certain prerequisites are met, arrangements of this kind are illegal in and of themselves, and no specific showing of unreasonable competitive effect is required. The discussion in *Northern*

Pacific R. Co. v. *United States*, 356 U. S. 1, 5–6 (1958), is dispositive of this question:

> "[T]here are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. . . .
>
> "Where [tying] conditions are successfully exacted competition on the merits with respect to the tied product is inevitably curbed. Indeed 'tying agreements serve hardly any purpose beyond the suppression of competition.' *Standard Oil Co. of California* v. *United States*, 337 U. S. 293, 305–306. They deny competitors free access to the market for the tied product, not because the party imposing the tying requirements has a better product or a lower price but because of his power or leverage in another market. At the same time buyers are forced to forego their free choice between competing products. For these reasons 'tying agreements fare harshly under the laws forbidding restraints of trade.' *Times-Picayune Publishing Co.* v. *United States*, 345 U. S. 594, 606. They are unreasonable in and of themselves whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a 'not insubstantial' amount of interstate commerce is affected. *International Salt Co.* v. *United States*, 332 U. S. 392." (Footnote omitted.)

Despite its recognition of this strict standard, the District Court held that petitioner had not even made out a case for the jury. The court held that respondents did not have "sufficient economic power" over credit,

the tying product here, because although the Credit Corp.'s terms evidently made the loans uniquely attractive to petitioner, petitioner had not proved that the Credit Corp. enjoyed the same unique attractiveness or economic control with respect to buyers generally. The court also held that the amount of interstate commerce affected was "insubstantial" because only a very small percentage of the land available for development in the area was foreclosed to competing sellers of prefabricated homes by the contract with petitioner. We think it plain that the District Court misunderstood the two controlling standards and misconceived the extent of its authority to evaluate the evidence in ruling on this motion for summary judgment.

A preliminary error that should not pass unnoticed is the District Court's assumption that two prerequisites mentioned in *Northern Pacific* are standards that petitioner must meet in order to prevail on the merits. On the contrary, these standards are necessary only to bring into play the doctrine of *per se* illegality. Where the standards were found satisfied in *Northern Pacific*, and in *International Salt*, *supra*, this Court approved summary judgment *against* the defendants but by no means implied that inability to satisfy these standards would be fatal to a plaintiff's case. A plaintiff can still prevail on the merits whenever he can prove, on the basis of a more thorough examination of the purposes and effects of the practices involved, that the general standards of the Sherman Act have been violated. Accordingly, even if we could agree with the District Court that the *Northern Pacific* standards were not satisfied here, the summary judgment against petitioner still could not be entered without further examination of petitioner's general allegations that respondents conspired together for the purpose of restraining competition and acquiring a monopoly in the market for pre-

fabricated houses. And such an examination could rarely justify summary judgment with respect to a claim of this kind, for as we said in *Poller* v. *Columbia Broadcasting*, 368 U. S. 464, 473 (1962):

> "We believe that summary procedures should be used sparingly in complex antitrust litigation where motive and intent play leading roles, the proof is largely in the hands of the alleged conspirators, and hostile witnesses thicken the plot. It is only when the witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised. Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of 'even handed justice.'" (Footnote omitted.)

We need not consider, however, whether petitioner is entitled to a trial on this more general theory, for it is clear that petitioner raised questions of fact which, if proved at trial, would bring this tying arrangement within the scope of the *per se* doctrine. The requirement that a "not insubstantial" amount of commerce be involved makes no reference to the scope of any particular market or to the share of that market foreclosed by the tie, and hence we could not approve of the trial judge's conclusions on this issue even if we agreed that his definition of the relevant market was the proper one.[1] An analysis of market shares might become

[1] Since the loan agreements obligated petitioner to erect homes manufactured by U. S. Steel on the land acquired, the trial judge thought the relevant foreclosure was the percentage of the undeveloped land in the county that was no longer open for sites on which homes made by competing producers could be built. This apparently was an insignificant .00032%. But of course the availability of numerous vacant lots on which homes might legally be erected would be small consolation to competing producers once the economic demand for homes had been pre-empted by respondents. It

relevant if it were alleged that an apparently small dollar-volume of business actually represented a substantial part of the sales for which competitors were bidding. But normally the controlling consideration is simply whether a total amount of business, substantial enough in terms of dollar-volume so as not to be merely "de minimus," is foreclosed to competitors by the tie, for as we said in *International Salt*, it is "unreasonable, *per se*, to foreclose competitors from any substantial market" by a tying arrangement, 332 U. S., at 396.

The complaint and affidavits filed here leave no room for doubt that the volume of commerce allegedly foreclosed was substantial. It may be true, as respondents claim, that petitioner's annual purchases of houses from U. S. Steel under the tying arrangement never exceeded $190,000, while more than $500,000 in annual sales were involved in the tying arrangement held illegal in *International Salt*, but we cannot agree with respondents that a sum of almost $200,000 is paltry or "insubstantial." In any event, a narrow focus on the volume of commerce foreclosed by the particular contract or contracts in suit would not be appropriate in this context. As the special provision awarding treble damages to successful plaintiffs illustrates, Congress has encouraged private antitrust litigation not merely to compensate those who have been directly injured but also to vindicate the important public interest in free competition. See *Perma Life Mufflers v. International Parts Corp.*, 392 U. S. 134, 138–139 (1968). For purposes of determining whether the amount of commerce foreclosed is too insubstantial to warrant prohibition of the practice, therefore, the relevant figure is the total volume of sales tied by the sales policy under

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seems plain that the most significant percentage figure with reference to the tied product is the percentage of annual sales of homes, or prefabricated homes, in the area that was foreclosed to other competitors by the tying arrangement.

challenge, not the portion of this total accounted for by the particular plaintiff who brings suit. In *International Salt* the $500,000 total represented the volume of tied sales to all purchasers, and although this amount was directly involved because the case was brought by the Government against the practice generally, the case would have been no less worthy of judicial scrutiny if it had been brought by one individual purchaser who accounted for only a fraction of the $500,000 in tied sales. In the present case, the annual sales allegedly foreclosed by respondents' tying arrangements throughout the country totaled almost $4,000,000 in 1960, more than $2,800,000 in 1961, and almost $2,300,000 in 1962. These amounts could scarcely be regarded as insubstantial.

The standard of "sufficient economic power" does not, as the District Court held, require that the defendant have a monopoly or even a dominant position throughout the market for the tying product. Our tie-in cases have made unmistakably clear that the economic power over the tying product can be sufficient even though the power falls far short of dominance and even though the power exists only with respect to some of the buyers in the market. See, *e. g., International Salt; Northern Pacific; United States* v. *Loew's, Inc.*, 371 U. S. 38 (1962). As we said in the *Loew's* case, 371 U. S., at 45: "Even absent a showing of market dominance, the crucial economic power may be inferred from the tying product's desirability to consumers or from uniqueness in its attributes."

These decisions rejecting the need for proof of truly dominant power over the tying product have all been based on a recognition that because tying arrangements generally serve no legitimate business purpose that cannot be achieved in some less restrictive way, the presence of any appreciable restraint on competition provides a sufficient reason for invalidating the tie. Such appreciable restraints result whenever the seller can exert some power

over some of the buyers in the market, even if his power is not complete over them and over all other buyers in the market. In fact complete dominance throughout the market, the concept that the District Court apparently had in mind, would never exist even under a pure monopoly. Market power is usually stated to be the ability of a single seller to raise price and restrict output, for reduced output is the almost inevitable result of higher prices. Even a complete monopolist can seldom raise his price without losing some sales; many buyers will cease to buy the product, or buy less, as the price rises. Market power is therefore a source of serious concern for essentially the same reason, regardless of whether the seller has the greatest economic power possible or merely some lesser degree of appreciable economic power. In both instances, despite the freedom of some or many buyers from the seller's power, other buyers—whether few or many, whether scattered throughout the market or part of some group within the market—can be forced to accept the higher price because of their stronger preferances for the product, and the seller could therefore choose instead to force them to accept a tying arrangement that would prevent free competition for their patronage in the market for the tied product. Accordingly, the proper focus of concern is whether the seller has the power to raise price, or impose other burdensome terms such as a tie-in, with respect to any appreciable number of buyers within the market.

The affidavits put forward by petitioner clearly entitle it to its day in court under this standard. A construction company president stated that competitors of U. S. Steel sold prefabricated homes and built conventional homes for at least $400 less than U. S. Steel's price for comparable models. Since in a freely competitive situation buyers would not accept a tying arrangement obligating them to buy a tied product at a price higher

than the going market rate, this substantial price differential with respect to the tied product (prefabricated homes) in itself may suggest that respondents had some special economic power in the credit market. In addition, petitioner's president, A. B. Fortner, stated that he accepted the tying condition on respondents' loan solely because the offer to provide 100% financing, lending an amount equal to the full purchase price of the land to be acquired, was unusually and uniquely advantageous to him. He found that no such financing was available to his corporation on any such cheap terms from any other source during the 1959–1962 period. His views on this were supported by the president of a finance company in the Louisville area, who stated in an affidavit that the type of advantageous financing plan offered by U. S. Steel "was not available to Fortner Enterprises or any other potential borrower from or through Louisville Mortgage Service Company or from or through any other leading institution or mortgage company to this affiant's knowledge during this period."

We do not mean to accept petitioner's apparent argument that market power can be inferred simply because the kind of financing terms offered by a lending company are "unique and unusual." We do mean, however, that uniquely and unusually advantageous terms can reflect a creditor's unique economic advantages over his competitors.[2] Since summary judgment in antitrust cases

[2] Uniqueness confers economic power only when other competitors are in some way prevented from offering the distinctive product themselves. Such barriers may be legal, as in the case of patented and copyrighted products, *e. g., International Salt; Loew's,* or physical, as when the product is land, *e. g., Northern Pacific.* It is true that the barriers may also be economic, as when competitors are simply unable to produce the distinctive product profitably; but the uniqueness test in such situations is somewhat confusing since the real source of economic power is not the product itself but rather the seller's cost advantage in producing it.

is disfavored, *Poller*, *supra*, the claims of uniqueness in this case should be read in the light most favorable to petitioner. They could well mean that U. S. Steel's subsidiary Credit Corp. had a unique economic ability to provide 100% financing at cheap rates. The affidavits show that for a three- to four-year period no other financial institution in the Louisville area was willing to match the special credit terms and rates of interest available from U. S. Steel. Since the possibility of a decline in property values, along with the difficulty of recovering full market value in a foreclosure sale, makes it desirable for a creditor to obtain collateral greater in value than the loan it secures, the unwillingness of competing financial institutions in the area to offer 100% financing probably reflects their feeling that they could not profitably lend money on the risks involved. U. S. Steel's subsidiary Credit Corp., on the other hand, may well have had a substantial competitive advantage in providing this type of financing because of economies resulting from the nationwide character of its operations. In addition, potential competitors such as banks and savings and loan associations may have been prohibited from offering 100% financing by state or federal law.[8] Under these circumstances the pleadings and affidavits sufficiently disclose the possibility of market power over borrowers in the credit market to entitle petitioner to go to trial on this issue.

It may also be, of course, that these allegations will not be sustained when the case goes to trial. It may turn out that the arrangement involved here serves legitimate business purposes and that U. S. Steel's subsidiary does not have a competitive advantage in the credit market. But on the record before us it would be impossible to reach such conclusions as a matter of

[8] See, *e. g.*, Federal Reserve Act § 24, 38 Stat. 273 (1913), as amended, 12 U. S. C. § 371; 12 CFR § 545.6-13 (c).

law, and it is not our function to speculate as to the ultimate findings of fact. We therefore conclude that the showing made by petitioner was sufficient on the market power issue.

Brief consideration should also be given to respondents' additional argument that even if their unique kind of financing reflected economic power in the credit market, and even if a substantial volume of commerce was affected, the arrangement involving credit should not be held illegal under normal tie-in principles. In support of this, respondents suggest that every sale on credit in effect involves a tie. They argue that the offering of favorable credit terms is simply a form of price competition equivalent to the offering of a comparable reduction in the cash price of the tied product. Consumers should not, they say, be deprived of such advantageous services, and they suffer no harm because they can buy the tangible product with credit obtained elsewhere if the combined price of the seller's credit-product package is less favorable than the cost of purchasing the components separately.

All of respondents' arguments amount essentially to the same claim—namely that this opinion will somehow prevent those who manufacture goods from ever selling them on credit. But our holding in this case will have no such effect. There is, at the outset of every tie-in case, including the familiar cases involving physical goods, the problem of determining whether two separate products are in fact involved. In the usual sale on credit the seller, a single individual or corporation, simply makes an agreement determining when and how much he will be paid for his product. In such a sale the credit may constitute such an inseparable part of the purchase price for the item that the entire transaction could be considered to involve only a single product. It will be time enough to pass on the issue of credit sales when a

case involving it actually arises. Sales such as that are a far cry from the arrangement involved here, where the credit is provided by one corporation on condition that a product be purchased from a separate corporation,[4] and where the borrower contracts to obtain a large sum of money over and above that needed to pay the seller for the physical products purchased. Whatever the standards for determining exactly when a transaction involves only a "single product," we cannot see how an arrangement such as that present in this case could ever be said to involve only a single product.

Nor does anything in respondents' arguments serve to distinguish credit from other kinds of goods and services, all of which may, when used as tying products, extend the seller's economic power to new markets and foreclose competition in the tied product. The asserted business justifications for a tie of credit are not essentially different from the justifications that can be advanced when the tying product is some other service or commodity. Although advantageous credit terms may be viewed as a form of price competition in the tied product, so is the offer of any other tying product on advantageous terms. In both instances, the seller can achieve his alleged purpose, without extending his economic power, by simply reducing the price of the tied product itself.[5]

The potential harm is also essentially the same when the tying product is credit. The buyer may have the

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[4] Cf. *Perma Life Mufflers, supra,* at 141–142; *Timken Co.* v. *United States,* 341 U. S. 593, 598 (1951); *Kiefer-Stewart Co.* v. *Seagram & Sons,* 340 U. S. 211, 215 (1951); *United States* v. *Yellow Cab Co.,* 332 U. S. 218, 227 (1947).

[5] Where price reductions on the tied product are made difficult in practice by the structure of that market, the seller can still achieve his alleged objective by offering other kinds of fringe benefits over which he has no economic power.

choice of buying the tangible commodity separately, but as in other cases the seller can use his power over the tying product to win customers that would otherwise have constituted a market available to competing producers of the tied product. "[C]ompetition on the merits with respect to the tied product is inevitably curbed." *Northern Pacific*, 356 U. S., at 6. Nor can it be assumed that because the product involved is money needed to finance a purchase, the buyer would not have been able to purchase from anyone else without the seller's attractive credit. A buyer might have a strong preference for a seller's credit because it would eliminate the need for him to lay out personal funds, borrow from relatives, put up additional collateral, or obtain guarantors, but any of these expedients might have been chosen to finance a purchase from a competing producer if the seller had not captured the sale by means of his tying arrangement.

In addition, barriers to entry in the market for the tied product are raised since in order to sell to certain buyers, a new company must not only be able to manufacture the tied product but also must have sufficient financial strength to offer credit comparable to that provided by larger competitors under tying arrangements. If the larger companies have achieved economies of scale in their credit operations, they can of course exploit these economies legitimately by lowering their credit charges to consumers who purchase credit only, but economies in financing should not, any more than economies in other lines of business, be used to exert economic power over other products that the company produces no more efficiently than its competitors.

For all these reasons we can find no basis for treating credit differently in principle from other goods and services. Although money is a fungible commodity—like wheat or, for that matter, unfinished steel—credit mar-

kets, like other markets, are often imperfect, and it is easy to see how a big company with vast sums of money in its treasury could wield very substantial power in a credit market. Where this is true, tie-ins involving credit can cause all the evils that the antitrust laws have always been intended to prevent, crippling other companies that are equally if not more efficient in producing their own products. Therefore, the same inquiries must be made as to economic power over the tying product and substantial effect in the tied market, but where these factors are present no special treatment can be justified solely because credit, rather than some other product, is the source of the tying leverage used to restrain competition.

The judgment of the Court of Appeals is reversed, and the case is remanded with directions to let this suit proceed to trial.

Reversed and remanded.

SUPREME COURT OF THE UNITED STATES

No. 306.—October Term, 1968.

Fortner Enterprises, Inc., Petitioner, v. United States Steel Corp. et al. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April 7, 1969.]

Mr. Justice White, with whom Mr. Justice Harlan joins, dissenting.

The judicially developed proscription of certain kinds of tying arrangements has been commonly understood to be this: an antitrust defendant who ties the availability of one product to the purchase of another violates § 1 of the Sherman Act if he both has sufficient market power in the tying product and affects a substantial quantity of commerce in the tied product. This case further defines the degree of market power which is sufficient to invoke the tying rule. Prior cases provide some guidance but are not dispositive. Admittedly, monopoly power or dominance in the tying market, *Times-Picayune Publishing Co.* v. *United States*, 345 U. S. 594, 608–611 (1953), is not necessary; it is enough if there is "sufficient economic power to impose an appreciable restraint on free competition in the tied product," *Northern Pacific Railway Co.* v. *United States*, 356 U. S. 1, 11 (1958). The Court indicated in *United States* v. *Loew's, Inc.*, 371 U. S. 38, 45 (1962), that this could be inferred from "the tying product's desirability to consumers or from uniqueness in its attributes."

The Court does not purport to abandon the general rule that some market power in the tying product is essential to a § 1 violation. But it applies the rule to permit proscription of a seller's extension of favorable credit terms conditioned on the purchase of an agreed

quantity of the seller's product without any offer of proof that the seller has any market power in the credit market itself. Although the credit extended was for the purchase and development of land on which the purchased houses were to be built, the Court's logic dictates the same result if unusually attractive credit terms had been offered simply for the purchase of the houses themselves. Proscription of the sale of goods on easy credit terms as an illegal tie without proof of market power in credit not only departs from established doctrine but in my view should not be outlawed as *per se* illegal under the Sherman Act. Provision of favorable credit terms may be nothing more or less than vigorous competition in the tied product, on a basis very nearly approaching the price competition which it has always been the policy of the Sherman Act to encourage. Moreover, it is far from clear that, absent power in the credit market, credit financing of purchases should be regarded as a tie of two distinct products any more than a commodity should be viewed as tied to its own price. Since provision of credit by sellers may facilitate competition, since it may provide essential risk or working capital to entrepreneurs or businessmen, and since the logic of the majority's opinion does away in practice with the requirement of showing market power in the tying product while retaining that requirement in form, the majority's *per se* rule is inappropriate. I dissent.

In this case there is no offer to prove monopoly or dominance in the tying product—money. And in no sense is the money provided to petitioner unique, even though the terms on which it was furnished and was to be repaid may have been advantageous, and indeed the money itself available from no other source on equally good terms. United States Steel was principally interested in the sale of houses, and petitioner in the economical development of his housing project. Before

concluding that the financing arrangements on which U. S. Steel sold its houses amounted to anything more than a price reduction on the houses, or that easy financing terms show that their provider has market power in the money market, the Court should have in mind the rationale on which the illegality of tying arrangements is based.

There is general agreement in the cases [1] and among commentators [2] that the fundamental restraint against which the tying proscription is meant to guard is the use of power over one product to attain power over another, or otherwise to distort freedom of trade and competition in the second product. This distortion injures the buyers of the second product, who because of their preference for the seller's brand of the first are artificially forced to make a less than optimal choice in the second. And even if the customer is indifferent among brands of the second product and therefore loses nothing by agreeing to use the seller's brand of the second in order to get his brand of the first,[3] such tying

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[1] *E. g.*, *United States* v. *Loew's, Inc.*, 371 U. S. 38, 44–45 (1962); *Northern Pacific Ry. Co.* v. *United States*, 356 U. S. 1, 6–7 (1958); *Times-Picayune Pub. Co.* v. *United States*, 345 U. S. 594, 611 (1953).

[2] *E. g.*, Report of the Attorney General's National Committee to Study the Antitrust Laws 145 (1955); Austin, The Tying Arrangement: A Critique and Some New Thoughts, 1967 Wis. L. Rev. 88; Bowman, Tying Arrangements and the Leverage Problem, 67 Yale L. J. 19 (1957); Day, Exclusive Dealing, Tying and Reciprocity—a Reappraisal, 29 Ohio St. L. J. 539, 540–541 (1968); Turner, The Validity of Tying Arrangements Under the Antitrust Laws, 72 Harv. L. Rev. 50, 60–61 (1958).

[3] Theoretically, the tie may do the tier little good unless the buyer is in that position. Even if the seller has a complete monopoly in the tying product, this is the case. The monopolist can exact the maximum price which people are willing to pay for his product. By definition, if his price went up he would lose customers. If he then refuses to sell the tying product without the tied product, and raises the price of the tied product above market, he will also lose

agreements may work significant restraints on competition in the tied product. The tying seller may be working toward a monopoly position in the tied product[4] and even if he is not the practice of tying forecloses other sellers of the tied product and makes it more difficult for new firms to enter that market. They must be prepared not only to match existing sellers of the tied product in price and quality, but to offset the attraction of the tying product itself. Even if this is possible through simultaneous entry into production of the tying product, entry into both markets is significantly more expensive than simple entry into the tied market, and shifting buying habits in the tied product is considerably more cumbersome and less responsive to variations in competitive offers.[5] In addition to these anticompetitive effects in the tied product, tying arrangements may be used to evade price control in the tying product through clandestine transfer of the profit to the

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customers. The tying link works no magic. However, difficulty in extracting the full monopoly profit without the tie, Burstein, A Theory of Full-Line Forcing, 55 Nw. U. L. Rev. 62 (1960), or the marginal advantage of a guaranteed first refusal from otherwise indifferent customers of the tied product, or other advantages mentioned in the text, may make the tie beneficial to its originator.

[4] If the monopolist uses his monopoly profits in the first market to underwrite sales below market price in the second, his monopoly business becomes less profitable. There remains an incentive to do so nonetheless when he thinks he can obtain a monopoly in the tied product as well, permitting him later to raise prices without fear of entry to recoup the monopoly profit he has forgone. But just as the firm whose deep pocket stems from monopoly profits in the tying product may make this takeover, so may anyone else with a deep pocket, from whatever source.

[5] Even when the terms of the tie allow a competitor to obtain the business in the tied product simply by offering a price lower than, rather than equal to, the tier's, the Court has found sufficient restriction in the tied product, as in the *Northern Pacific* case.

tied product;[4] they may be used as a counting device to effect price discrimination;[5] and they may be used to force a full line of products on the customer[6] so as to extract more easily from him a monopoly return on one unique product in the line.[7]

All of these distortions depend upon the existence of some market power in the tying product quite apart from any relationship which it might bear to the tied product. In this case, what proof of any market power

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[4] Bowman, Tying Arrangements and the Leverage Problem, 67 Yale L. J. 19, 21-23 (1957).

[5] *Id.*, at 23-24.

[6] Burstein, A Theory of Full-Line Forcing, 55 Nw. U. L. Rev. 62 (1960).

[7] Tie-ins may also at times be beneficial to the economy. Apart from the justifications discussed in the text are the following. They may facilitate new entry into fields where established sellers have wedded their customers to them by ties of habit and custom. *Brown Shoe Co. v. United States*, 370 U. S. 294, 330 (1962); Note, Newcomer Defenses: Reasonable Use of Tie-ins, Franchises, Territorials, and Exclusives, 18 Stan. L. Rev. 457 (1966). They may permit clandestine price cutting in products which otherwise would have no price competition at all because of fear of retaliation from the few other producers dealing in the market. They may protect the reputation of the tying product if the tied product is used in conjunction with it and may cause it to misfunction. Compare *International Business Machines Corp. v. United States*, 298 U. S. 131, 139-140 (1936), and *Standard Oil Co. v. United States*, 337 U. S. 293, 306 (1949), with *Pick Mfg. Co. v. General Motors Corp.*, 80 F. 2d 641 (C. A. 7th Cir. 1935), aff'd 299 U. S. 3 (1936). And, if the tied and tying products are functionally related, they may reduce costs through economies of joint production and distribution. These benefits which may flow from tie-ins, though perhaps in some cases a potential basis for an affirmative defense, were not sufficient to avoid the imposition of a *per se* proscription, once market power has been demonstrated. But in determining whether even the market-power requirement should be eliminated, as the logic of the majority opinion would do, extending the *per se* rule to absolute dimensions, the fact that tie-ins are not entirely unmitigated evils should be borne in mind.

in the tying product has been alleged? Only that the tying product—money—was not available elsewhere on equally good terms, and perhaps not at all. Let us consider these possibilities in turn.

First, if enough money to proceed was available elsewhere and U. S. Steel was simply offering credit at a lower price, in terms of risk of loss, repayment terms, and interest rate, surely this does not establish that U. S. Steel had market power by any measure in the money market. There was nothing unique about U. S. Steel's money except its low cost to petitioner. A low price on a product is ordinarily no reflection of market power. It proves neither the existence of such power nor its absence, although absence of power may be the more reasonable inference. One who has such power benefits from it precisely because it allows him to raise prices, not lower them, and ordinarily he does so.

A low price in the tying product—money, the most fungible item of trade since it is by definition an economic counter—is especially poor proof of market power when untied credit is available elsewhere. In that case, the low price of credit is functionally equivalent to a reduction in the price of the houses sold. Since the buyer has untied credit available elsewhere, he can compare the houses-credit package of U. S. Steel as competitive with the price of the untied credit plus the cost of houses from another source. By cutting the price of his houses, a competitor of U. S. Steel can compete with U. S. Steel houses on equal terms since U. S. Steel's money is no more desirable to the purchaser than money from another source except in point of price. The same money which U. S. Steel is willing to risk or forgo by providing better credit terms it could sacrifice by cutting the price of houses. There is no good reason why U. S. Steel should always be required to make the price cut in one form rather than another, which its purchaser prefers.

Provision of credit financing by the seller of a commodity to its buyer is a very common event in the American economy. Often the seller is not willing to supply credit generally for the business and personal needs of the public at large, but restricts his credit to the purchasers of the commodity which he is principally in the business of selling. In all such cases, the commodity may be viewed as tied to the credit. In all such cases, the money itself is no more desirable from one source than from another. But in all such cases, under the majority opinion, the mere fact that the credit is offered on uniquely advantageous terms makes the transaction a *per se* violation of § 1 of the Sherman Act. And so long as the buyer has chosen to accept the seller's credit terms over any others available to him, the buyer, like petitioner here, must have viewed them as uniquely advantageous to him. The logic of the majority opinion, then, casts great doubt on credit financing by sellers. I would not proscribe credit financing by sellers who had no independently demonstrable power in the credit market. Unlike the majority, I am unable to read petitioner's affidavits, the fruit of years of pretrial discovery, to offer any independent proof whatever of such market power.[10]

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[10] I agree with the majority that the affidavits are not *inconsistent* with a "possibility of market power" and that such power might be shown by showing certain kinds of "unique economic ability." But I cannot see how petitioner offers to prove this, although by taking judicial notice of the possibility that U. S. Steel may have operated free of legal restraints on other lenders otherwise willing to provide 100% financing—a possibility not mentioned by petitioner—the majority suggests to petitioner an element of the sort of detailed description of one facet of the credit market which, with much more information about the whole of the market, would be relevant. But this was not the basis on which petitioner offered to go to trial and I would not remand for trial even under the applicable *Poller* standard.

Second, adopting the other assumption, that sufficient credit to go forward with the enterprise was simply unavailable to petitioner from any other source at all, the result in this case is even worse. Were it not for the credit extended by U. S. Steel, petitioner would have been unable to carry out his development. U. S. Steel would not have foreclosed anyone from selling houses to petitioner since no one would have sold any houses to petitioner. A seller who is willing to take credit risks which no one else finds acceptable is simply engaging in the hard and risky competition which it is the policy of the Sherman Act to encourage. And if he may not do so, then those businesses and entrepreneurs who depend for their survival and growth or for the initiation of new enterprises on the availability of credit financing from sellers may well fail for lack of credit availability from other sources. Of course, if the credit was unavailable elsewhere because U. S. Steel was a monopolist of credit in a relevant market—which petitioner does not assert—the tie would be illegal. But here it was evidently unavailable elsewhere simply because others were not willing to match U. S. Steel's relatively low price for acceptance of high risk.

Neither petitioner nor the Court asserts that under prior antitrust doctrine U. S. Steel would have violated § 1 of the Sherman Act or § 3 of the Clayton Act [11] if it had simply contracted to supply all the houses Fortner required to develop the particular tract of land involved here—a requirements contract for the development—even if the price for the houses was particularly advantageous. What triggers the application of the antitrust laws is the asserted tying arrangement, the sale of one product conditioned on the purchase of another. And it is not all tying transactions in general

[11] 38 Stat. 731, 15 U. S. C. § 14.

but only those where leverage in one market has been used to distort another which so far have been held illegal restraints of trade. The basis for the rule is clear where the seller is dominant in the tying product market, where the product is patented, or where it is in short supply. In these cases the restraint on competitors in the tied product as well as on buyers of the tying product is reasonably apparent. But I question that buyers' acceptance of the tie-in—the simple fact that there are customers—will always suffice to prove market power in the tying product. Where the seller exercises no market power in the tying item but buyers prefer the tie-in because the seller offers the tying product on favorable terms—where the price is unusually low or where the seller gives the product away conditioned on buying other merchandise—the seller in effect is merely competing in the tied product market. Buyers are not burdened. They may buy both tied and tying products elsewhere on normal terms. Nor are the seller's competitors restrained. The economic advantage of the tie-in to buyers can be matched by other sellers of the tied product by offering lower prices on that product. Promotional tie-ins effected by underpricing the tying product do not themselves prove there is any market power to exercise in that product market, unless the economic resources to withstand lower profit margins and the willingness to compete in this manner are themselves suspect. If they are, however, they should as surely taint and muffle hard price competition in the tied market itself, a result which, short of a § 2 violation, it would be difficult to reach under the Sherman Act.

I cannot join such a complete evisceration of the requirement that market power in the tying product be shown before a tie-in becomes illegal under § 1. Certainly it is unnecessary to erect a § 1 *per se* ban on promotional tie-ins in order to protect the tied product

market. If the resulting exclusion of competitors is of sufficient significance to threaten competition in that market, the transaction may be reached as a requirements contract under § 3 of the Clayton Act.[12] If the promotional tie is in effect price discrimination, that too can be examined under statutes designed for that purpose.[13] Moreover, the transaction could be dealt with as an unfair method of competition under § 5 of the Federal Trade Commission Act, c. 311, 38 Stat. 719, as amended, 15 U. S. C. § 45. For example, in *Hastings Mfg. Co.* v. *F. T. C.*, 153 F. 2d 253 (C. A. 6th Cir.), cert. denied, 328 U. S. 853 (1946), it was, *inter alia*, held an unfair method of competition for a seller of piston rings, ranking sixth or seventh in the industry, to attempt to obtain exclusive dealers or preferential dealers by guaranteeing profits to the dealers and making loans to them, tied to the purchase of the piston rings. Relying on the expertise of the FTC and the precedents of this Court, the Court of Appeals concluded that although it "is not illegal for a manufacturer to finance his retail outlets" (a proposition called into question by today's decision) tying this to exclusive or preferential dealing was an unfair method of competition.

The principal evil at which the proscription of tying aims is the use of power in one market to acquire power in, or otherwise distort, a second market. This evil simply does not exist if there is no power in the first market. The first market here is money, a completely fungible item. I would not apply a *per se* rule here without independent proof of market power. Cutting prices in the credit market is more likely to reflect a

[12] The arrangements proscribed by § 3 relate only to "goods, wares, merchandise, machinery, supplies or other commodities . . . ." 38 Stat. 731, 15 U. S. C. § 14.

[13] Robinson-Patman Price Discrimination Act, c. 592, 49 Stat. 1526, as amended, 15 U. S. C. § 13 *et seq.*

competitive attempt to offset the market power of others in the tied product than it is to reflect existing market power in the credit market. Those with real power do not offer uniquely advantageous deals to their customers; they raise prices.

This is not, of course, to say that if market power were proved in the tying product the *per se* rule would be inapplicable, or that it is necessarily impossible to prove market power in the credit market. There may be so few suppliers of credit in a certain relevant market, for example, that they have the power among them to manipulate the price and terms of credit, not necessarily by conspiracy, but by parallel behavior. Through proof that such a situation existed, or through proof of some other sort, an antitrust plaintiff might be able to show market power in the credit market, and if this were coupled with a tie I would consider the arrangement *per se* illegal under conventional antitrust doctrine. However, I do not consider petitioner's allegations that U. S. Steel lowered its price of credit sufficient to establish market power in credit and I can find no offer by petitioner of the necessary supplementary proof.

SUPREME COURT OF THE UNITED STATES

No. 306.—October Term, 1968.

Fortner Enterprises, Inc., Petitioner, v. United States Steel Corp. et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April 7, 1969.]

Mr. Justice Fortas, with whom Mr. Justice Stewart joins, dissenting.

I share my Brother White's inability to agree with the majority in this case, and, in general, I subscribe to his opinion. I add this separate statement of the reasons for my dissent.

The facts of this case are materially different from any tying case that this Court has heretofore decided. The tying doctrine originated in situations where the seller of product A offers it for sale only on the condition that the buyer also agree to buy product B from the seller. In *International Salt Co.* v. *United States*, 332 U. S. 392 (1947), for example, the company leased its patented machines on the condition that the lessee agree to use only International's salt products in the machines. In *Northern Pacific Railway Co.* v. *United States*, 356 U. S. 1 (1958), the railroad leased land from its vast holdings on condition that the lessee accept "preferential routing" clauses compelling the lessee to ship on the railroad's lines all commodities produced or manufactured on the land unless another railroad offered more favorable terms.

Although the tying doctrine originated under the specific language of § 3 of the Clayton Act, *Northern Pacific* was necessarily a Sherman Act case, because the Clayton Act provision applies only to "goods, wares, merchandise,

machinery, supplies, or other commodities," and not to land. But *Northern Pacific*, in effect, applied the same standards to tying arrangements under the Sherman as under the Clayton Act, on the theory that the anti-competitive effect of a tie-in was such as to make the difference in language in the two statutes immaterial. The present case, like *Northern Pacific*, is also exclusively a Sherman Act proceeding. But, here, U. S. Steel is not selling or leasing land subject to an agreement that its prefabricated houses be used thereon. If these were the facts, and if U. S. Steel controlled enough land within an economically demarcated area or "market," however defined, the case might well be governed by *Northern Pacific*. But, here, U. S. Steel is not selling or providing land. It is selling prefabricated steel houses to be erected in a subdivision and it is providing financing for the land acquisition, improvement, development and erection costs. Most of the financing is related not to the land cost but to the purchase and installation of the houses.

U. S. Steel neither owned nor controlled any of the land involved in the venture. On the contrary, the building lots comprising the subdivision on which the houses were to be built were owned by another company of which the principal owner was Mr. Fortner, who owned the appellant. Nor is U. S. Steel selling credit in any general sense. The financing which it agrees to provide is solely and entirely ancillary to its sale of houses. Under contract terms of a familiar sort in subdivision development, the credit advances are geared to progressive stages of the subdivision development and the purchase, erection, and resale of the houses.

U. S. Steel approached the appellant seeking to sell him prefabricated steel houses to be erected on the land which Mr. Fortner's other company owned. In October 1960, after lengthy discussions, U. S. Steel offered,

through its Credit Corporation, to lend appellant about $2,000,000. This sum was to be secured by mortgages on the lots. The mortgage notes carried 6% interest, and appellant also agreed to pay a "Service Fee" of ½ of 1% of the principal amount of the notes. Provisions were made to insure that the funds would be progressively advanced and used for land acquisition (from Mr. Fortner's other company), for development and improvement of the area preparatory to construction, and for the purchase and erection of the houses themselves. Appellant was obligated to erect on each lot a prefabricated house manufactured by U. S. Steel. Of the total of about $2,000,000 to be advanced, $1,700,000 was to be disbursed against purchase and installation of the houses from U. S. Steel and the balance for land acquisition and development.

The Court holds that this was a "tying" agreement, and that, therefore, the extraordinarily onerous incidents of *per se* illegality which this Court has attached to "tying" agreements must apply here as well.

I cannot agree. This is a sale of a single product with the incidental provision of financing. It is not a sale of one product on condition that the buyer will not deal competitors for another product or will buy the other product exclusively from the seller.

As my Brother WHITE shows, to treat the financing of the housing development as a "tying" product for the houses is to distort the doctrine and to depart from the reason for its existence. Such an extension of the tying doctrine entirely departs from the factual pattern which is described in § 3 of the Clayton Act and which has been the basis of this Court's extension of the doctrine to the Sherman Act and its development of the rule that such tying arrangements are illegal on a *per se* basis—*i. e.*, without any showing that they constitute an unreasonable restraint of trade or tend to create a

monopoly. The Court has established this rule because the kind of tying arrangement involved in prior cases involves the use of a leverage position in the tying product—the patented machine, the copyrighted film, the unique land—to force the buyer to purchase the tied product. To apply this rule to a situation where the only "leverage" is lower price for the article sold or more advantageous financing or credit terms for the article sold and for ancillary costs connected with the sale is to distort the doctrine, and, indeed, to convert it into an instrument which penalizes price competition for the article that is sold.

It is, of course, not inconceivable that a case might arise where §§ 1 or 2 of the Sherman Act would outlaw a combination of sale and credit on a specific showing of market power and anticompetitive effect. It is also possible that such a combination might, in some situations, constitute "unfair methods of competition" in violation of § 5 of the Federal Trade Commission Act, or price discrimination or furnishing services on discriminatory terms, in violation of § 2 of the Clayton Act, as my Brother WHITE suggests. The majority, however, does not rely on any such analysis of the actualities of market power or anticompetitive effect, but sweeps this kind of credit arrangement within the *per se* ban.*

*The case is remanded for trial. I find it difficult to learn from the majority opinion just what is to be determined at that trial. Some parts of the discussion suggest that petitioner must establish that U. S. Steel had the market power over credit by showing facts in no way suggested by the pleadings to this stage. At another point the majority even suggests that if U. S. Steel can show "legitimate business purposes" and the absence of "competitive advantage" in the credit market, it will have made out a defense. But in an earlier part of the opinion, the majority says explicitly that "it is clear that petitioner raised questions of fact which, if proved at trial, would bring this tying arrangement within the scope of the *per se* doctrine." (P. 5.) If it is this sentence which deter-

The effect of this novel extension—this distortion, as I view it—of the tying doctrine may be vast and destructive. It is common in our economy for a seller to extend financing to a distributor or franchisee to enable him to purchase and handle the seller's goods at retail, to rent retail facilities, to acquire fixtures or machinery for service to customers in connection with distribution of the seller's goods, or, as here, to prepare the land for and to acquire and erect the seller's houses for sale to the public. It is hardly conceivable, except for today's opinion of the Court, that extension of such credit as a part of a general sale transaction or distribution method could be regarded as a "tying" of the seller's goods to the credit, so that where the businessman receiving the credit agrees to handle the seller-lender's product, the arrangement is *per se* unlawful merely because the amount or terms of the credit were more favorable than could be obtained from banking institutions in the area. Arrangements of this sort run throughout the economy. They frequently, and perhaps characteristically, represent an indispensable method of financing distributive and service trades, and not until today has it been held that they are tying arrangements and therefore *per se* unlawful. Cf. *Standard Oil Co.* v. *United States*, 337 U. S. 293, 315, 321 (1949) (dissenting opinion of DOUGLAS, J., and dissenting opinion of Jackson, J.).

In the present case in every respect, the provision of credit for construction of the houses and other associated

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mines the range of issues open on remand there will be no examination at the trial of the business or economic background of the credit arrangements here attacked nor of the effects, if any, of this arrangement on competition in the prefabricated house market. All petitioner will need to do is show that U. S. Steel did indeed condition the extension of its subsidiary's credit on an agreement to purchase U. S. Steel prefabricated houses and it will have demonstrated the automatic illegality of the credit arrangement.

costs of developing the subdivision, was, from U. S. Steel's point of view, ancillary and subordinated to the sale of the houses." The Credit Corporation did not operate at a loss, but its profit was comparatively low. Provision of special financing to the prospective purchaser of prefabricated houses by the Credit Corporation was intimately and exclusively related to the end object of the sale of the houses by the Homes Division. It was not a separate item of "sale."

This pattern is by no means limited to the provisions of financing, nor can the impact of the majority's opinion be so limited. Almost all modern selling involves providing some ancillary services in connection with making the sale—delivery, installation, fixturing, servicing, training of the customer's personnel in use of the material sold, furnishing display material and sales aids, extension of credit. Customarily—indeed almost invariably—the seller offers these ancillary services only in connection with the sale of his own products, and they are often offered without cost or at bargain rates. It is possible that in some situations, such arrangements could be used to restrain competition or might have that effect, but to condemn them out-of-hand under the "tying" rubric, is, I suggest, to use the antitrust laws themselves as an instrument in restraint of competition.

For these reasons, I dissent.